

## Calendar No. 267

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SENATE

{ REPORT  
114–153

### 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

OCTOBER 19, 2015.—Ordered to be printed

Mr. ISAKSON, from the Committee on Veterans' Affairs,  
submitted the following

### R E P O R T

[To accompany S. 1203]

The Committee on Veterans' Affairs (hereinafter, "Committee"), to which was referred the bill (S. 1203) to amend title 38, United States Code (hereinafter, "U.S.C."), to improve the processing by the Department of Veterans Affairs (hereinafter, "VA" or "Department") of claims for benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes, having considered the same, reports favorably thereon with an amendment in the nature of a substitute and an amendment to the title and recommends that the bill, as amended, do pass.

### INTRODUCTION

On May 6, 2015, Senator Heller introduced S. 1203, the proposed 21st Century Veterans Benefits Delivery Act. S. 1203 would improve the processing by VA of claims for benefits. Senators Casey, Collins, Heinrich, Manchin, Moran, Tester, Toomey, and Vitter are original cosponsors. Senators Cochran and Coons were later added as cosponsors of the bill. The bill was referred to the Committee.

On January 7, 2015, Senator Heller introduced S. 114, the proposed Veterans Affairs Research Transparency Act of 2015. S. 114 would require VA to allow public access to research of the Department. The bill was referred to the Committee.

On January 13, 2015, Senator Heller introduced S. 151, the proposed Filipino Veterans Promise Act. S. 151 would require the Department of Defense (hereinafter, "DOD") to establish a process for determining whether individuals who served in the organized military forces of the government of the Commonwealth of the Philippines or in the Philippine Scouts while in the service of the United States Armed Forces during World War II and who are not

included in the Missouri List are eligible for certain benefits relating to their service. Senator Hirono is an original cosponsor of the bill. The bill was referred to the Committee.

On January 13, 2015, Senator Tester introduced S. 172, the proposed Access to Appropriate Immunizations for Veterans Act of 2015. S. 172 would include within authorized preventive health services available to veterans through VA immunizations against infectious diseases, including each immunization on the recommended adult immunization schedule established by the Advisory Committee on Immunization Practices. The bill was referred to the Committee.

On January 28, 2015, Senator Heller introduced S. 296, the proposed Veterans Small Business Opportunity and Protection Act of 2015. S. 296 would enhance treatment of certain small business concerns for purposes of VA contracting goals and preferences. Senator Manchin is an original cosponsor. The bill was referred to the Committee.

On January 28, 2015, Senator Kirk introduced S. 297, the proposed Frontlines to Lifelines Act of 2015. S. 297 would direct VA to expand and revive, for a 3-year period, VA's Intermediate Care Technician (hereinafter, "ICT") Pilot Program that was carried out between January 2013 and February 2014. Senators Manchin and Udall are original cosponsors. Senators Blunt and Scott were later added as cosponsors of the bill. The bill was referred to the Committee.

On February 5, 2015, Senator Moran introduced S. 398, the proposed Chiropractic Care Available to All Veterans Act of 2015. S. 398 would require the availability of chiropractic care and services at all VA medical centers by the end of 2018. Senators Blumenthal, Brown, Grassley, King, Tester, and Whitehouse are original cosponsors. Senators Baldwin, Collins, Durbin, Sanders, Schumer, and Vitter were later added as cosponsors of the bill. The bill was referred to the Committee.

On March 4, 2015, Senator Franken introduced S. 666, the proposed Quicker Veterans Benefits Delivery Act of 2015. S. 666 would prohibit VA from requesting additional medical examinations of veterans who have submitted sufficient medical evidence provided by non-VA medical professionals. The bill was referred to the Committee.

On March 10, 2015, Senator Toomey introduced S. 695, the proposed Dignified Interment of Our Veterans Act of 2015. S. 695 would require VA to study and report to Congress on matters relating to the interring of veterans' unclaimed remains in national cemeteries under the control of VA's National Cemetery Administration. The bill was referred to the Committee.

On March 16, 2015, Senator Boozman introduced S. 743, the proposed Honor America's Guard-Reserve Retirees Act of 2015. S. 743 would honor as a veteran any person entitled to retired pay for nonregular (Reserve) service or who, but for age, would be so entitled. Senator Donnelly is an original cosponsor of the bill. Senators Capito, Cochran, Coons, Franken, Gillibrand, Grassley, Heller, Klobuchar, Menendez, Mikulski, Murkowski, Peters, Roberts, Rounds, Schatz, Schumer, Stabenow, Tester, Toomey, and Wyden were later added as cosponsors of the bill. The bill was referred to the Committee.

On March 25, 2015, Senator Tester introduced S. 865, the proposed Ruth Moore Act of 2015. S. 865 would modify VA's disability compensation evaluation procedures for veterans with mental health conditions related to military sexual trauma. Senators Baldwin, Bennet, Collins, Durbin, Gillibrand, King, Klobuchar, and McCaskill are original cosponsors. Senators Boxer and Shaheen were later added as cosponsors of the bill. The bill was referred to the Committee.

On April 21, 2015, Senator Durbin introduced S. 1021, the proposed Wounded Warrior Workforce Enhancement Act. S. 1021 would direct VA to award grants to eligible institutions to establish a master's degree program in orthotics and prosthetics or expand upon an existing master's degree program in such area. Senator Murphy is an original cosponsor. Senator Coons was later added as a cosponsor of the bill. The bill was referred to the Committee.

On May 14, 2015, Senator Murkowski introduced S. 1358, the proposed Hmong Veterans' Service Recognition Act. S. 1358 would authorize the interment in national cemeteries under the control of the National Cemetery Administration of individuals who served in combat support of the Armed Forces in the Kingdom of Laos between February 28, 1961, and May 15, 1975. Senators Franken, Klobuchar, Sullivan, and Whitehouse are original cosponsors of the bill. Senators Baldwin, Boxer, and Feinstein were later added as cosponsors of the bill. The bill was referred to the Committee.

#### COMMITTEE HEARINGS

On May 13, 2015, the Committee held a hearing on legislation pending before the Committee. Testimony was received from David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance, Department of Veterans Affairs; Anthony Kurta, Deputy Assistant Secretary of Defense, Military Personnel Policy, Department of Defense; Teresa W. Gerton, Deputy Assistant Secretary for Policy, Veterans' Employment and Training Service, Department of Labor; Alphonso Maldon, Jr., Chairman, Military Compensation and Retirement Modernization Commission; Jeffrey E. Phillips, Executive Director, Reserve Officers Association; and Aleks Morosky, Deputy Legislative Director, National Legislative Service, Veterans of Foreign Wars.

On June 3, 2015, the Committee held a hearing on legislation pending before the Committee. Testimony was received from Thomas Lynch, Assistant Deputy Under Secretary for Health Clinical Operations, Veterans Health Administration, Department of Veterans Affairs; Adrian Atizado, Assistant National Legislative Director, Disabled American Veterans; Fred Benjamin, Vice President and Chief Operating Officer, Medicalodges, Inc.; Thomas J. Snee, National Executive Director, Fleet Reserve Association; and Sergeant First Class Victor Medina, U.S. Army, Retired.

On June 24, 2015, the Committee held a hearing on legislation pending before the Committee. Testimony was received from Dr. Rajiv Jain, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration, Department of Veterans Affairs; Ian de Planque, Legislative Director, The American Legion; Pete Hegseth, CEO, Concerned Veterans of America; Adrian Atizado, Assistant National Legislative Director, Disabled American Veterans; Carl Blake, Associate Executive Di-

rector, Paralyzed Veterans of America; Max Stier, President and CEO, Partnership for Public Service; and John Rowan, National President, Vietnam Veterans of America.

#### COMMITTEE MEETING

After reviewing the testimony from the foregoing hearings, the Committee met in open session on July 22, 2015, to consider, among other legislation, an amended version of S. 1203, including provisions derived from S. 1203 as introduced and provisions derived from the other legislation noted above. The Committee voted by voice vote, without objection, to report favorably to the Senate S. 1203 as amended and as subsequently amended at the Committee meeting.

#### SUMMARY OF THE COMMITTEE BILL AS REPORTED

S. 1203, as reported (hereinafter, “the Committee bill”), consists of 40 sections, summarized below.

Section 1 provides a short title and a table of contents.

#### TITLE I—HEALTH CARE MATTERS

##### SUBTITLE A—EXPANSION AND IMPROVEMENT OF HEALTH CARE BENEFITS

Section 101 would specify that VA’s preventive health services include providing each immunization on the recommended adult immunization schedule; would require VA to include information on those immunizations in VA’s annual report to Congress; and would require VA to report to Congress on VA’s quality measures and metrics to ensure that veterans receiving medical services from VA receive each immunization.

Section 102 would require the increased provision of chiropractic care services to veterans at VA medical facilities.

##### SUBTITLE B—HEALTH CARE ADMINISTRATION

Section 111 would authorize \$5 million for the purpose of VA developing a partnership with institutions of higher education to expand programs of advanced degrees in prosthetics and orthotics.

Section 112 would require VA to establish a free, publicly-available Web site that aggregates information on Department research data files; would direct VA to require that any final, peer-reviewed manuscript using VA-funded research data be submitted to a free, publicly-available Web site; and would require the VA-DOD Joint Executive Committee to prepare recommendations for establishing a program for long-term cooperation and data sharing to facilitate research.

Section 113 would require VA to revive the Intermediate Care Technician Pilot Program.

Section 114 would require that, in a case in which VA hires a health care provider who is or was employed by the Secretary of Defense, provided health care services, and was credentialed by DOD, the Secretary of Defense must transfer its credentialing data regarding that provider to VA upon VA’s request.

Section 115 would, in certain circumstances, require VA emergency rooms to provide medical screenings and treatment to individuals requesting examination or treatment.

#### SUBTITLE C—IMPROVEMENT OF MEDICAL WORKFORCE

Section 121 would require VA to include in its training program for health professionals education and training of marriage and family therapists and licensed professional mental health counselors.

Section 122 would expand the qualifications for an individual to be appointed as a VA licensed professional mental health counselor to include individuals with a doctoral degree in mental health counseling.

Section 123 would include physician assistants in the list of VA health care personnel who receive pay that is competitive with non-VA health care facilities.

Section 124 would require VA to submit to Congress a report on VA's medical workforce.

### TITLE II—COMPENSATION AND OTHER BENEFITS MATTERS

#### SUBTITLE A—BENEFITS CLAIMS SUBMISSION

Section 201 would express the sense of Congress that DOD should establish a process to allow veterans service organizations to be present for Transition Assistance Program (hereinafter, "TAP") seminars related to filing a VA disability claim and require DOD to submit to Congress a report on participation of veterans service organizations in TAP.

Section 202 would require VA to make available to the public information on the average length of time it takes VA to adjudicate an appeal filed within 180 days after VA's initial decision and the average length of time it takes VA to adjudicate an appeal not filed within 180 days after VA's initial decision and require VA to submit a report reflecting the number of appeals filed within 180 days and not filed within 180 days before and after VA begins publishing those statistics.

Section 203 would provide that a hearing before the Board of Veterans' Appeals (hereinafter, "Board" or "BVA") will be conducted as the Board considers appropriate, either in person or through video conferencing. However, upon request from an appellant, the hearing will be held as the appellant considers appropriate, either in person or through video conferencing.

#### SUBTITLE B—PRACTICES OF REGIONAL OFFICES RELATING TO BENEFITS CLAIMS

Section 211 would require the Government Accountability Office (hereinafter, "GAO") to complete a review of the VA regional offices to help the Veterans Benefits Administration achieve more consistent performance in the processing of claims for disability compensation, including an assessment of the effectiveness of communication between the regional offices and veterans service organizations and caseworkers of Members of Congress.

Section 212 would require VA to include in its annual budget submission information regarding the number of claims a full-time employee can process in a year, based on a time and motion study

and other information VA considers appropriate; a description of actions VA will take to improve claims processing; and an assessment of the effects of actions to improve claims processing identified in the prior budget.

Section 213 would require VA to submit to Congress a report outlining the criteria and procedures VA will use to determine the appropriate staffing levels at regional offices once VA transitions to the National Work Queue for distribution of claims processing workload.

Section 214 would require VA to submit to Congress annual reports on VA's progress in implementing the Veterans Benefits Management System. This requirement would sunset 3 years after enactment.

Section 215 would require VA to submit to Congress a report that details the plans to reduce the inventory of VA's non-rating workload.

Section 216 would express the sense of Congress that VA should include in its Monday Morning Workload Report information regarding the workload of fully-developed claims at each regional office and enhanced information regarding pending appeals.

#### SUBTITLE C—OTHER BENEFITS MATTERS

Section 221 would provide that, notwithstanding any law regarding the licensure of physicians, certain physicians may conduct an examination pursuant to a contract with VA at any location in any state, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract and the physician is licensed in at least one state.

Section 222 would require VA and the Chief of the National Guard Bureau to jointly develop and implement procedures to improve the timely provision to VA of information in possession of the National Guard Bureau that VA requires to process claims for VA benefits and then submit a report describing the requests for information from the National Guard Bureau and the timeliness of responses.

Section 223 would direct VA, in consultation with DOD, to review the process for determining whether certain individuals have the requisite service requirements for purposes of receiving specific Filipino veterans' benefits.

Section 224 would require VA to provide a report on the furnishing of general and specialty medical examinations for purposes of claims for VA benefits.

Section 225 would express the sense of Congress that VA should report to Congress on claims based on post-traumatic stress disorder alleged to have been incurred or aggravated by military sexual trauma.

#### TITLE III—EDUCATION MATTERS

Section 301 would add sections 12304a and 12304b of title 10, U.S.C., to the list of authorities in sections 16131 and 16133 of title 10, U.S.C., under which a Reservist may regain lost payments and lost entitlement for the Montgomery GI Bill-Selected Reserve education program when that activation authority is used to order a

Reservist to active duty, preventing the Reservist from completing his/her studies.

Section 302 would require educational institutions to report annually to VA on the academic progress of students for whom it receives payments under the Post-9/11 GI Bill. The Secretary of Veterans Affairs would be required to include this information in the annual report to Congress on the Post-9/11 GI Bill.

Section 303 would require the Secretary of Defense to include in its annual report to Congress on the Post-9/11 GI Bill the highest level of education attained by each individual who transfers his/her Post-9/11 GI Bill benefits to eligible dependents.

Section 304 would require the Secretary concerned to collect upon separation the highest level of education attained by each member of the Armed Forces.

#### TITLE IV—EMPLOYMENT AND TRANSITION MATTERS

Section 401 would require the Department of Labor's Director of Veterans' Employment and Training for each state to coordinate his/her activities with the state agencies for labor and veterans affairs.

Section 402 would require an annual report from states to include the number of job fairs attended by One-Stop Career Center employees at which they had contact with a veteran and the number of veterans at each event so contacted.

Section 403 would require the Secretary of Labor to review the challenges employers face in hiring veterans and the information sharing among Federal departments and agencies serving veterans and separating servicemembers.

Section 404 would require the Secretary of Defense, in consultation with the Secretaries of Veterans Affairs and Labor, to review the Transition GPS Core Curriculum and report to Congress recommendations on its effectiveness, allocation of the roles and responsibilities of Federal departments in the program, optimizing each topic by length of instruction and whether or not it is mandatory, and developing metrics for assessment of the program.

Section 405 would clarify that preseparation counseling shall not be provided to a servicemember discharged before completion of 180 continuous days on active duty.

#### TITLE V—VETERAN SMALL BUSINESS MATTERS

Section 501 would permit the surviving spouse of a veteran owner of a small business, who is less than 100 percent disabled and whose death is not a result of a service-connected disability, to maintain the status of such small business concern for up to 3 years following the death of such veteran.

Section 502 would permit the surviving spouse of a servicemember, who owns at least 51 percent of a small business concern and dies in the line of duty, to maintain the status of such small business concern for up to 10 years following the death of such servicemember.

#### TITLE VI—BURIAL MATTERS

Section 601 would require VA to complete a study on matters relating to the interring of unclaimed remains of veterans in national

cemeteries and submit a report to Congress on the findings of the study.

#### TITLE VII—OTHER MATTERS

Section 701 would honor as veterans certain individuals who performed service in the Reserve components of the Armed Forces.

Section 702 would require VA, in consultation with DOD and such agencies or individuals VA considers appropriate, to submit a report to Congress on the extent to which Laotian military forces provided combat support to the Armed Forces of the United States between February 28, 1961, and May 15, 1975; whether the current classification by the DOD Civilian/Military Service Review Board is appropriate; and any recommendations for legislative action.

Section 703 would revert to the 2011 rates the reporting fees that are paid to educational institutions.

#### BACKGROUND AND DISCUSSION

##### TITLE I—HEALTH CARE MATTERS

##### SUBTITLE A—EXPANSION AND IMPROVEMENT OF HEALTH CARE BENEFITS

##### *Sec. 101. Improved access to appropriate immunizations for veterans.*

Section 101 of the Committee bill, which is derived from S. 172, would clarify that the term “preventive health services” encompasses immunizations against infectious diseases, including each immunization on the recommended adult immunization schedule at the time such immunization is indicated on that schedule; require VA to report on programs conducted to ensure that veterans have received recommended immunizations at the appropriate time; and direct VA to develop, implement, and report on quality measures and metrics to ensure that veterans receiving VA medical services receive each recommended immunization at the appropriate time.

*Background.* To promote health and prevent diseases among veterans, VA delivers preventive health services, which includes providing immunizations against infectious diseases. Recommendations on immunizations for adults are made by the Advisory Committee on Immunization Practices, an entity that advises the Secretary of the Department of Health and Human Services and is supported by the Centers for Disease Control and Prevention (hereinafter, “CDC”). That advisory committee publishes an immunization schedule for adults. Veterans, particularly those at high-risk for vaccine-preventable diseases, may benefit from receiving each immunization on the recommended adult immunization schedule, as appropriate.

*Committee Bill.* Subsection (a) of section 101 of the Committee bill would amend section 1701(9)(F) of title 38, U.S.C., to clarify that the term “preventive health services” encompasses immunizations against infectious diseases, including each immunization on the recommended adult immunization schedule at the time such immunization is indicated on that schedule. It would also clarify that the term “recommended adult immunization schedule” means the schedule established (and periodically reviewed and, as appropriate, revised) by the Advisory Committee on Immunization Prac-



tices established by the Secretary of Health and Human Services and delegated to the CDC.

Subsection (b) of section 101 of the Committee bill would amend section 1704(1)(A) of title 38, U.S.C., to require VA to report to Congress not later than October 31 each year on programs conducted during the previous fiscal year to ensure that veterans have received each immunization on the recommended adult immunization schedule at the time such immunization is indicated on that schedule.

Subsection (c) of section 101 of the Committee bill would require VA to submit to Congress, within 2 years of enactment, a report on the development and implementation of quality measures and metrics to ensure that veterans receiving medical services from VA receive each immunization on the recommended adult immunization schedule at the time such immunization is indicated on that schedule.

*Sec. 102. Expansion of provision of chiropractic care and services to veterans.*

Section 102 of the Committee bill, which is derived from S. 398, would require VA to expand the provision of chiropractic services.

*Background.* Pursuant to Public Law 107–135, the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, VA carries out a program to provide chiropractic services to veterans through VA Medical Centers (hereinafter, “VAMCs”) and community-based outpatient clinics (hereinafter, “CBOCs”). VA is required to designate at least one site in each Veterans Integrated Service Network (hereinafter, “VISN”) to offer chiropractic services. As of July 1, 2015, 59 VAMCs and CBOCs provide chiropractic services and VA employs 73 doctors of chiropractic.

According to data published by the Department in June 2015, more than 61 percent of Operation Enduring Freedom/Operation Iraqi Freedom/Operation New Dawn veterans who sought health care from the Department over the period of the first quarter of fiscal year (hereinafter, “FY”) 2002 through the first quarter of FY 2015 were treated for musculoskeletal ailments. Chiropractic therapy can assist with some of these types of ailments and injuries.

*Committee Bill.* Subsection (a) of section 102 of the Committee bill would require that the provision of chiropractic care and services be available in at least two VAMCs or clinics in each VISN not later than 2 years after enactment of the bill and at least 50 percent of VAMCs and clinics in each VISN not later than 3 years after enactment.

Subsection (b) of section 102 of the Committee bill would expand the definitions of “medical services,” “rehabilitative services,” and “preventive health services” in section 1701 of title 38, U.S.C., to include chiropractic care or services.

SUBTITLE B—HEALTH CARE ADMINISTRATION

*Sec. 111. Expansion of availability of prosthetic and orthotic care for veterans.*

Section 111 of the Committee bill, which is derived from S. 1021, would authorize \$5 million to VA for FY 2017 for the purpose of

developing partnerships with institutions of higher education to expand programs of advanced degrees in prosthetics and orthotics.

*Background.* Currently, veterans can access prosthetic and orthotic services through all 150 VAMCs. According to VA, 79 of these facilities include accredited VA orthotic and prosthetic providers. The remaining locations provide services through contracted and fee-based care.

In 2009, the decision was made by the American Board for Certification in Orthotics, Prosthetics and Pedorthics and the Board of Certification Accreditation International that a master's degree would be the entry level of education required for certification in these fields. While certified providers were allowed to continue their practice, all new providers were required to attain this education level for certification as of 2012.

Following over 10 years of war, there is an increased need for prosthetics and orthotics services for the management of complex injuries. Furthermore, as clinicians in the field certified prior to this new degree requirement begin to retire, they must be replaced with qualified professionals certified at the master's degree level. Therefore, it is important for VA to ensure a sufficient number of certified providers will be available to provide orthotic and prosthetic care to veterans in the years to come.

While the need for certified prosthetists and orthotists is significant, only a small number of schools nationwide offer master's and doctoral programs in these fields. Therefore, a key component to ensuring an adequate supply of certified professionals available to serve veterans lies in VA's collaboration with institutions of higher education for the expansion and creation of education and training programs.

*Committee Bill.* Section 111 of the Committee bill would, in a freestanding provision, require VA to take a set of actions to expand the number of potential prosthetic and orthotic clinicians across the country. Subsection (a) of section 111 of the Committee bill would expand the availability of prosthetic and orthotic care for veterans by requiring VA to work with institutions of higher education for the establishment or expansion of advanced degree programs in prosthetics and orthotics.

Subsection (b) of section 111 of the Committee bill would require VA to develop and submit a report to the Committee on Veterans' Affairs of the Senate and House of Representatives setting forth a plan for carrying out subsection (a). VA would be required to develop such a plan in consultation with veterans service organizations, institutions of higher education with accredited degree programs in prosthetics and orthotics, and representatives from the prosthetics and orthotics field.

Five million dollars would be authorized in subsection (c) of section 111 of the Committee bill to be appropriated to VA for FY 2017, which would remain available for expenditure until September 30, 2019. Subsection (d) of section 111 of the Committee bill requires this section to take effect 1 year after the date of enactment of the Committee bill.

*Sec. 112. Public access to Department of Veterans Affairs research and data sharing between Departments.*

Section 112 of the Committee bill, which is derived from S. 114, would direct VA to enhance public access to information on VA's research data files and publications based on research funded by VA. This section would also require that VA and DOD jointly formulate recommendations for long-term cooperation and data-sharing to facilitate research.

*Background.* A number of government agencies and departments provide funding for research to advance health care, including the National Institutes of Health and VA. The focus of this research varies across agencies and departments, with VA assuming primary responsibility for funding research to improve health care for our nation's veterans. VA maintains numerous data files that can be used in research to improve veterans' health care. For example, VA maintains data files on the cost of care veterans receive and researchers may use those files to examine the cost effectiveness of various treatments. However, many researchers face numerous obstacles in their attempts to access those files. These obstacles may result in delays in improvements of health care for veterans.

VA-funded research has not only contributed to numerous innovations in veterans' health care, it has made valuable contributions to health care overall. Previously, many clinicians, veterans, and others lacked access to information on these innovations because publications based on this research were often only available through subscriptions to various scholarly journals, which were cost prohibitive for many. VA has made progress in improving public access to peer-reviewed publications from VA-funded research in compliance with the Objectives for Public Access to Scientific Publications described in the February 22, 2013, Memorandum to the Heads of Executive Departments and Agencies regarding increasing access to the results of Federally-funded scientific research. However, the Committee notes that the new public access requirements apply to VA-funded research and VA employees only.

Like VA, DOD maintains research data files and VA and DOD have, in certain instances, shared their data for research on topics of importance to both servicemembers and veterans. For example, VA has partnered with DOD on two research consortia focused on traumatic brain injury and post-traumatic stress disorder. The findings from these consortia, particularly in the areas of biomarkers and advanced brain imaging, are expected to fuel new advances in traumatic brain injury and post-traumatic stress disorder care. Additional research is needed to inform care and services for servicemembers, veterans, and their families. It is important that VA and DOD work together to minimize unnecessary barriers researchers experience when trying to access data for scholarly purposes.

*Committee Bill.* Subsection (a) of section 112 of the Committee bill would require VA to make information on VA data files, including the contents of such files, and instructions for how to access such files for use in research publicly available on a VA Web site.

Subsection (b) of section 112 would require VA to ensure that manuscripts based on VA-funded research are available for free to the public through a digital archive established by VA or another executive agency, consistent with available copyright law. This sub-

section would also require VA, within 1 year of when VA begins ensuring that publications are submitted to a digital archive, to submit an annual report on the implementation of this subsection during the most recent 1-year period to the Committee on Veterans' Affairs of the Senate and House of Representatives.

Subsection (c) of section 112 of the Committee bill would require the VA and DOD Joint Executive Committee to establish a program for long-term cooperation and data-sharing to facilitate research.

Subsection (d) of section 112 would define the term "executive agency" with the same meaning in section 133 of title 41, U.S.C.

Subsection (e) establishes the effective date for section 112 as 1 year after the date of enactment of the Committee bill. The Committee intends that VA comply with section 112 by continuing ongoing efforts by VA and other departments directed at making data from Federally-funded research publicly available. The Committee also intends that existing requirements, including those that require VA-funded investigators place published manuscripts on the National Institutes of Health PubMed database and that VA-funded clinical trial results be available through the ClinicalTrials.gov archive, continue to be utilized as a part of fulfilling the requirements of section 112 of the Committee bill.

*Sec. 113. Revival of Intermediate Care Technician Pilot Program of Department of Veterans Affairs.*

Section 113 of the Committee bill, which is derived from S. 297, would require VA to revive the Intermediate Care Technician Pilot Program.

*Background.* Starting in January 2013 through February 2014, the Veterans Health Administration created a pilot program to increase veterans hiring and serve as a conduit for future medical professionals. The original Intermediate Care Technician Pilot Program hired veteran medics and corpsmen to function as skilled nursing assistants in VA Emergency Departments (hereinafter, "ED"). Because of their past role in the military, veteran medics and corpsmen often have more experience than VA's traditional ED technician. VA selected 45 veterans to serve as ICTs at 15 VA EDs for 13 months. According to the "ICT After Action Report" dated August 2014, "ICTs made a positive impact on patient care in the Emergency Departments" and after the pilot's conclusion "the 15 facilities overwhelming[ly] supported the expansion of the ICT role."

*Committee Bill.* Section 113 of the Committee bill would, in a freestanding provision, require the revival of the Intermediate Care Technician Pilot Program.

Specifically, subsection (a) of section 113 of the Committee bill would require the revival of the ICT Pilot Program.

Subsection (b) of section 113 of the Committee bill would direct the Secretary of Veterans Affairs to select at least 45 ICTs to participate in the ICT Pilot Program. Subsection (b) directs VA, in determining the facilities to participate in the pilot program, to give priority to facilities with the longest wait times for appointments.

Subsection (c) of section 113 of the Committee bill would designate that the duration of the pilot program would be 3 years.

Subsection (d) of section 113 of the Committee bill would define the terms “hospital care” and “medical services” with the same meaning in section 1701 of title 38, U.S.C.

Subsection (e) of section 113 of the Committee bill specifies that this section will become effective 1 year after enactment.

*Sec. 114. Transfer of health care provider credentialing data from Secretary of Defense to Secretary of Veterans Affairs.*

Section 114 of the Committee bill, which is derived from S. 297, would require, in the instance a health care provider is or was employed by DOD, the Secretary of Defense to transfer the credentials of that provider to VA upon VA’s request.

*Background.* According to a March 9, 2015, report from VA entitled “A Report Assessing the Staffing Needs of Each Medical Facility within the Department of Veterans Affairs,” VA will need to hire an additional 10,682 full-time staff to provide direct care to veterans. The hiring process at VA can be lengthy, particularly for hiring medical professionals whose credentials and licenses must be verified prior to starting employment with the agency. Requiring DOD to transfer a provider’s credentials upon his/her hiring at a VA facility could shorten and improve VA’s hiring process.

*Committee Bill.* In a freestanding provision, section 114 of the Committee bill would address the transfer of credentialing data from DOD to VA. Subsection (a) of section 114 of the Committee bill would direct the Secretary of Defense to transfer to the Secretary of Veterans Affairs the credentialing data of a covered health care provider upon the request of the Secretary of Veterans Affairs.

Subsection (b) of section 114 of the Committee bill defines a covered health care provider as an individual who is or was employed by the Secretary of Defense, provides or provided health care related services, and was credentialed by the Secretary of Defense.

Subsection (c) of section 114 of the Committee bill would direct the Secretaries of Defense and Veterans Affairs to establish policies through regulations to carry out this section.

Subsection (d) of section 114 of the Committee bill defines credentialing as the process of screening and evaluating a health care provider’s qualifications and credentials, including licensure, education, training and experience, and current competence and health status.

Subsection (e) of section 114 of the Committee bill specifies that this section will become effective 1 year after enactment.

*Sec. 115. Examination and treatment by Department of Veterans Affairs for emergency medical conditions and women in labor.*

Section 115 of the Committee bill, which is derived from an amendment offered by Senator Murray at the Committee meeting on July 22, 2015, would require VA to ensure all of its hospitals with emergency departments are providing appropriate stabilizing treatment for emergency medical conditions and labor.

*Background.* The Emergency Medical Treatment and Active Labor Act (hereinafter, “EMTALA”), originally enacted as a part of Public Law 99–272, the Consolidated Omnibus Budget Reconciliation Act of 1985, requires all hospitals that accept payment from the Department of Health and Human Services, Centers for Medi-

care and Medicaid Services, Medicare program to either provide treatment to any individual at or within 250 yards of such a hospital who is seeking emergency treatment or stabilize that individual prior to transfer to another facility. Although VA hospitals are not subject to EMTALA by law, the Veterans Health Administration Handbook 1101.05 states VA practice is to provide evaluations and emergency care that is compliant with EMTALA. Because inpatient VA facilities currently do not always offer the same care as other hospitals that would provide emergency care, particularly as relates to labor and delivery care, the exact requirements of how EMTALA applies to VA facilities is not always clear.

*Committee Bill.* Section 115 of the Committee bill would add a new section, 1784A, to title 38, U.S.C., to require any VA facility with an emergency department to provide stabilizing care in the form of an examination or treatment for an emergency medical condition for any individual who is on the campus of the hospital and requests treatment or has a request for treatment made on his/her behalf.

In this section, an emergency medical condition means a medical condition with acute symptoms of sufficient severity, including severe pain, such that the lack of immediate medical attention could reasonably be expected to result in putting the individual's health in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part. With respect to a pregnant woman who is having contractions, an emergency medical condition includes a situation in which there is inadequate time to safely transfer her to another hospital before delivery or one in which a transfer would pose a threat to the health or safety of the woman or unborn child. The treatment provided would be that within the existing capability of the emergency department including services routinely provided by an emergency department to determine whether an emergency medical condition exists. Under this section, the campus of a hospital includes the physical area immediately adjacent to the main buildings of the hospital, other areas or structures within 250 yards from the main building and any other areas the Secretary of Veterans Affairs determines are part of the hospital.

It is the intent of the Committee that VA facilities take reasonable efforts to ensure that individuals with an emergency medical condition are stabilized, that no material deterioration of the condition is likely, with reasonable medical probability, to occur during transfer of the individual from a medical facility. In the case of a pregnant woman, that includes delivery during transfer. Under this section, transferring means a person employed by, or person affiliated or associated with, the hospital directing the movement of an individual from the hospital unless the individual has been declared dead or leaves the facility without permission of any such person.

A hospital is deemed to meet the requirements of this section if it offers information about a medical examination and treatment, including the risks and benefits of that examination and treatment to the individual or person acting on the individual's behalf and that individual or person acting on the individual's behalf refuses treatment. The hospital is also considered to have met the requirements of this section if it offers to transfer the individual and that

individual or person acting on behalf of the individual refuses treatment. In cases in which an examination, treatment, or transfer is not done because an individual does not consent, the hospital shall take all reasonable steps to obtain the written informed consent of the individual refusing the examination, treatment, or transfer.

The section requires that a hospital first stabilize a patient before any transfer occurs. That requirement does not apply to an appropriate transfer to another facility if the individual or a person legally acting on behalf of the individual has been informed of the risks of transfer and requests a transfer to another medical facility in writing or a physician of the Department has signed a certification that the medical benefits reasonably expected from providing appropriate medical treatment at another medical facility outweigh the increased risks. If a physician of the Department is not physically present in the emergency department at the time, a qualified medical person as defined by the Secretary of Veterans Affairs for the purposes of this section may sign a certification after the physician of the Department has made the required determination. The certification must include a summary of the risks and benefits upon which the certification was based.

An appropriate transfer under this section is one in which the transferring hospital provides the available medical treatment within its capacity to minimize the risks of health to the individuals involved, the receiving facility has the space and personnel available to treat the individual and agrees to provide the treatment, the transferring hospital sends the receiving facility all medical records or copies of medical records that are available and relate to the individual's emergency medical condition, and the transfer is done using all necessary and medically appropriate life support measures through qualified personnel and transportation equipment. The Secretary of Veterans Affairs may also include other requirements related to the health and safety of individuals transferred in order for a transfer to be considered appropriate. The information in the record should include observations of signs or symptoms, any preliminary diagnosis, any treatment provided, the results of any tests, and the informed written consent (or copy of) requesting the transfer.

#### SUBTITLE C—IMPROVEMENT OF MEDICAL WORKFORCE

##### *Sec. 121. Inclusion of mental health professionals in education and training program for health personnel of the Department of Veterans Affairs.*

Section 121 of the Committee bill, which is derived from an amendment offered by Senator Tester at the Committee meeting on July 22, 2015, would require the Secretary of Veterans Affairs to include education and training of marriage and family therapists and licensed professional mental health counselors in required education and training programs.

*Background.* Pursuant to Public Law 109–461, the Veterans Benefits, Health Care, and Information Technology Act of 2006, VA is authorized to hire licensed professional mental health counselors and marriage and family therapists to provide veterans with appropriate behavioral health services. However, those professionals

make up less than 1 percent of VA's behavioral health workforce, a significantly lower percentage than in other parts of the health care delivery system. In the overall behavioral health care workforce, mental health counselors and marriage and family therapists represent forty percent of the workforce.

Behavioral health care is a specialty that is very much in demand both at VA and in the overall health care delivery system. In 2014, VA data showed that it provided specialized mental health treatment to more than 1.4 million veterans and the Department expects to complete 12.7 million outpatient visits for recipients of VA mental health care in FY 2016. Appropriate and accessible training for a variety of behavioral health care providers is important to ensure access to timely, quality care.

Section 7302(a)(1) of title 38, U.S.C., requires VA to conduct education and training programs to better serve veterans within VA's health care system and also to play a leadership role in educating future health care professionals for the entire health care delivery system.

*Committee Bill.* Section 121 of the Committee bill would require VA to include the education and training of marriage and family therapists and licensed professional mental health counselors in the education and training programs that are authorized under section 7302(a)(1) of title 38, U.S.C.

*Sec. 122. Expansion of qualifications for licensed mental health counselors of the Department of Veterans Affairs to include doctoral degrees.*

Section 122 of the Committee bill, which is derived from an amendment offered by Senator Tester at the Committee meeting on July 22, 2015, would require VA to include doctoral degrees in VA's qualifications for licensed mental health counselors.

*Background.* Section 7402(b)(11)(A) of title 38, U.S.C., specifies the levels of training that are necessary to be eligible to hold specific positions within VA. This section restricts the criteria for mental health counselors to master's degrees. Many training programs for mental health counselors are at the master's level, which typically take about 2 or 3 years to complete and include direct clinical experience as a requirement for graduation. Doctoral degrees also include clinical experience requirements along with a research component and typically take 5 years to complete. Under current law, mental health counselors working in VA must have master's degrees, but candidates with doctoral degrees are not eligible for positions within VA despite having additional years of training.

*Committee Bill.* Section 122 of the Committee bill would amend section 7402(b)(11)(A) of title 38, U.S.C., to expand the qualifications of licensed mental health counselors to include those with a doctoral degree.

*Sec. 123. Requirement that physician assistants employed by the Department of Veterans Affairs receive competitive pay.*

Section 123 of the Committee bill, which is derived from an amendment offered by Senator Tester at the Committee meeting on July 22, 2015, would include physician assistants in the types of providers who are eligible for locality pay.



*Background.* Section 7451(a)(2) of title 38, U.S.C., allows VA to ensure that rates of pay for health care personnel positions within VA facilities are competitive with the rates of pay in non-VA facilities in the same labor market area. This allows VA to operate on fair footing with other potential health care employers that would be competing to hire for the same or similar positions. VA is explicitly authorized to use locality pay for registered nurses and the positions listed in section 7401(1) and (3) of title 38, U.S.C. Although the Secretary of Veterans Affairs is able to appoint other specialties to the list, this authority has yet to be utilized.

VA is affiliated with more than 30 accredited physician assistant education programs and offers continuing medical education programs, tuition support programs, education debt reduction programs, and employee incentive scholarship programs as incentives to help grow the number of physician assistants within VA. However, physician assistant positions can still be difficult for facilities to fill. According to a September 2015 VA Inspector General review entitled, Office of Inspector General Determination of Veterans Health Administration's Occupational Staffing Shortages, physician assistants were the occupation with the fourth largest staffing shortages for 2014.

*Committee Bill.* Section 123 of the Committee bill modifies section 7451(a)(2) of title 38, U.S.C., to allow VA to offer rates of pay that are competitive with non-VA facilities within the same labor market areas when hiring for physician assistant positions.

*Sec. 124. Report on medical workforce of the Department of Veterans Affairs.*

Section 124 of the Committee bill, which is derived from an amendment offered by Senator Tester at the Committee meeting on July 22, 2015, would require the Secretary of Veterans Affairs to submit a report on the medical workforce of VA.

*Background.* VA operates the largest integrated health care system in the nation, comprised of 150 VA medical centers, 830 community-based outpatient clinics, 136 community-living centers, 300 Vet Centers, and 80 mobile Vet Centers. These sites of care employ nearly 300,000 employees and serve nearly 7 million unique patients. In the past year, VA's patient workload has increased by 10.5 percent.

For a number of years, GAO and the VA Inspector General have reported that inadequate staffing and gaps in hiring health care professionals at VA medical facilities across the country have adversely impacted patient care. Issues related to recruiting and retaining a capable workforce also became a focus last summer following the VA Inspector General's report about Phoenix.

In comparison to other segments of health care services at VA, demand for behavioral health services is one of the fastest growing. Between FY 2013 and FY 2014, VA witnessed a 4.4 percent increase in the number of veterans receiving mental health care. To help meet the behavioral health needs of veterans, VA can hire a variety of mental health professionals, including psychiatrists, psychologists, and social workers, as well as licensed professional mental health counselors and marriage and family therapists.

Section 7601, et seq. of title 38, U.S.C., provides VA with authority to carry out VA's Health Professionals Education Assistance

Program to provide scholarships, tuition assistance, debt reduction assistance, and other educational programs to VA health care professionals. The Health Professionals Education Assistance Program serves as a recruitment and retention tool for the Department. The Veterans Access, Choice, and Accountability Act of 2014, Public Law 113–146, increased from \$60,000 to \$120,000 the cap on debt reduction payments to an individual participant in the Education Debt Reduction Program. Additionally, Public Law 113–175, the Department of Veterans Affairs Expiring Authorities Act of 2014, allows VA to pay student loan expenses directly, rather than require the participant to pay upfront.

*Committee Bill.* Subsection (a) of section 124 of the Committee bill would, in a freestanding provision, require VA not later than 120 days after enactment to submit to the Committee on Veterans' Affairs of the Senate and House of Representatives a report regarding the medical workforce at VA.

Subsection (b) of section 124 of the Committee bill specifies that the report shall include details related to the number of licensed professional mental health counselors and marriage and family therapists at VA and a description of the actions taken by VA in consultation with the Director of the Office of Personnel Management to create an occupational series for such counselors and therapists, including a timeline among other things. This subsection also indicates the report should include a breakdown of spending by VA in connection with its Education Debt Reduction Program during the 3 years prior to release of the report; an update on the efforts of the Secretary of Veterans Affairs to offer training opportunities in telemedicine to medical residents in VA medical facilities that use telemedicine, consistent with medical residency program requirements established by the Accreditation Council for Graduate Medical Education, as required in section 108(b) of Public Law 112–154, the Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012; and an assessment of the development and implementation by the Secretary of Veterans Affairs of succession planning policies to address the prevalence of vacancies in positions in the Veterans Health Administration of more than 180 days.

## TITLE II—COMPENSATION AND OTHER BENEFITS MATTERS

### SUBTITLE A—BENEFITS CLAIMS SUBMISSION

#### *Sec. 201. Participation of veterans service organizations in Transition Assistance Program.*

Section 201 of the Committee bill, which is derived from S. 1203 as introduced, would express the sense of Congress that DOD should establish a process to allow veterans service organizations to be present for TAP seminars related to filing a VA disability claim and would require DOD to submit to Congress a report on participation of veterans service organizations in TAP.

*Background.* Under section 1144 of title 10, U.S.C., the Departments of Defense, Homeland Security, Veterans Affairs, and Labor are required to carry out TAP, which provides multiple days of seminars to servicemembers who are separating from the military. Although those seminars outline benefits that separating servicemembers may be eligible to receive from VA, representatives from

veterans service organizations who are authorized to represent veterans applying for VA benefits are generally not present. A memorandum from the Secretary of Defense, dated in December 2014, entitled “Installation Access and Support Services for Nonprofit Non-Federal Entities” encourages installation commanders to permit non-profit entities to provide services to servicemembers and their families on military installations.

*Committee Bill.* Section 201(a) of the Committee bill would express the sense of Congress that the Secretary of Defense, in collaboration with the Secretary of Labor, the Secretary of Homeland Security, and the Secretary of Veterans Affairs, should establish a process by which a representative of a veterans service organization may be present at any portion of TAP relating to the submittal of claims to VA for disability compensation or dependency and indemnity compensation.

Section 201(b) of the Committee bill would require DOD, not later than 18 months after enactment, to submit to Congress a report on participation of veterans service organizations in TAP. The report must include an assessment of the compliance of DOD facilities with the directives included in the Secretary of Defense memorandum entitled “Installation Access and Support Services for Nonprofit Non-Federal Entities”; the number of military bases that have complied with those directives; and how many veterans service organizations have been present at a portion of TAP.

Section 201(c) of the Committee bill would define veterans service organization as any organization recognized by VA for representation of veterans under section 5902 of title 38, U.S.C.

*Sec. 202. Requirement that Secretary of Veterans Affairs publish the average time required to adjudicate timely and untimely appeals.*

Section 202 of the Committee bill, which is derived from S. 1203 as introduced, would require VA to make publicly available information on the time it takes VA to adjudicate timely appeals and untimely appeals and would require VA to submit a report reflecting the number of timely appeals and untimely appeals filed before and after VA begins publishing those statistics.

*Background.* Under current law, section 7105(b) of title 38, U.S.C., a claimant has 1 year to file a Notice of Disagreement (hereinafter, “NOD”) after the date on which VA mails notice of an initial decision on a claim for benefits. If a claimant waits until the end of the 1-year period to file an NOD, VA may be required to redevelop the record to ensure that the evidence is current. Data from VA suggests that VA is able to process appeals with less delay if the NOD is filed during the first 180 days of the appeal period. In FY 2011, 2012, and through August 31, 2013, where the agency of original jurisdiction received an NOD more than 180 days after the date the decision was mailed, it took, on average, 46.5 additional days to decide the appeal. In FY 2014, the Veterans Benefits Administration resolved appeals in an average of 561 days if the appeal was filed within the first 180 days, compared to an average of 595 days for NODs filed more than 180 days after notice of the decision.

In its FY 2016 budget submission, VA included a legislative proposal to reduce from 1 year to 60 days the time period within

which an NOD must be filed after the initial decision. Before determining whether the appeal period should be shortened, it is the view of the Committee that it would be useful to ascertain whether it would encourage more claimants to file their appeals within the first 180 days of the appeal period if they are made aware that appeals are resolved more quickly when they do so.

*Committee Bill.* In a freestanding provision, section 202 of the Committee bill would address information on processing appeals. Section 202(a) of the Committee bill would require VA, on an ongoing basis, to make available to the public the average length of time it takes for VA to adjudicate a timely appeal and the average length of time it takes VA to adjudicate an untimely appeal. This requirement would take effect 1 year after enactment and would apply until 3 years after enactment.

Section 202(b) would require VA to submit to the Committee on Veterans' Affairs of the Senate and House of Representatives a report on whether publication of that data has had an effect on the number of timely appeals that are filed. Specifically, the report would include the number of appeals and timely appeals filed during the 1-year period before the requirement to publish the data takes effect and the number of appeals and timely appeals filed during the 1-year period beginning 1 year after the requirement to publish the data takes effect.

Section 202(c) would define a "timely" appeal for these purposes as meaning an appeal filed not more than 180 days after the date VA mails notice of the initial decision and an "untimely" appeal as meaning an appeal filed more than 180 days after VA mails notice of the initial decision.

*Sec. 203. Determination of manner of appearance for hearings before Board of Veterans' Appeals.*

Section 203 of the Committee bill, which is derived from S. 1203 as introduced, would allow the Board of Veterans' Appeals to determine whether a hearing will be held through video conference rather than in-person, unless the appellant requests a specific type of hearing.

*Background.* Under current law, section 7107(d) of title 38, U.S.C., an individual who appeals to the Board of Veterans' Appeals may request a hearing at the Board's location in Washington, DC, or at a VA facility outside of Washington, DC (a field hearing). Further, under section 7107(e) of title 38, U.S.C., VA may provide equipment so that hearings outside of the Washington, DC, area can be conducted through video teleconference technology with Board members located in DC. If VA has made that technology available, the Chairman of the Board may allow appellants the opportunity to participate in a hearing using video teleconference technology, rather than having an in-person hearing with a Board member.

According to the Fiscal Year 2013 Annual Report of the Board of Veterans' Appeals, in FY 2013, the Board conducted 11,431 hearings, 51 percent of which were via video teleconferencing. In that report, the Board noted that, by increasing the percent of hearings conducted by video teleconference, "the Board reduced its travel costs by 26 percent and reduced down time faced by [Veterans Law Judges] when traveling to in-person hearing sites." In FY 2014, the

Board then conducted 10,879 hearings and 54 percent were video teleconference hearings. More recently, VA provided this testimony before the Senate Veterans' Affairs Committee in May 2015 regarding the content of section 203:

The Board has historically been able to schedule video conference hearings more quickly than in-person hearings, saving valuable time in the appeals process for Veterans who elect this type of hearing. In FY 2014, on average, video conference hearings were held 124 days sooner than in-person hearings before a Veterans Law Judge \* \* \* at a Regional Office Travel Board hearing \* \* \*.

\* \* \* Enactment of [this provision] could also lead to an increase in the number of final decisions for Veterans as a result of increased productivity at the Board. Time lost due to travel and time lost in the field due to appellants failing to show up for their hearing would be greatly reduced, allowing [Veterans Law Judges] to better focus their time and resources on issuing final Board decisions for Veterans.

*Committee Bill.* Section 203 of the Committee bill would amend section 7107 of title 38, U.S.C., to provide that a hearing before the Board will be conducted, as the Board considers appropriate, either in person or through picture and voice transmission. It would further provide that, upon request by an appellant, a hearing before the Board will be conducted as the appellant considers appropriate, either in person or through picture and voice transmission.

Amended section 7107 would also provide that, in a case in which a hearing before the Board is to be conducted through picture and voice transmission, VA must provide suitable facilities and equipment to the Board or other components of VA to enable an appellant located at an appropriate facility within the area served by a regional office to participate in the hearing. Amended section 7107 would further provide that any hearing conducted through picture and voice transmission must be conducted in the same manner as, and must be considered the equivalent of, a personal hearing. Finally, it would provide that, in a case in which a hearing before the Board is to be conducted in person, the hearing must be held at the principal location of the Board or at a VA facility located within the area served by a VA regional office.

The amendments made by section 203 of the Committee bill would apply to cases received by the BVA pursuant to NODs submitted on or after the date of enactment.

The Committee is of the view that allowing the Board the flexibility to conduct a greater percentage of hearings through video conferencing could reduce delays and increase productivity. However, the Committee also intends to ensure that an appellant will retain the option to appear in person for a Board hearing, if the appellant so desires.

SUBTITLE B—PRACTICES OF REGIONAL OFFICES RELATING TO  
BENEFITS CLAIMS

*Sec. 211. Comptroller General review of claims processing performance of regional offices of Veterans Benefits Administration.*

Section 211 of the Committee bill, which is derived from S. 1203 as introduced, would require a GAO review of VA regional offices.

*Background.* VA processes claims for disability benefits at 56 regional offices around the country. In its Monday Morning Workload Report, VA publicly reports a number of performance outcomes with regard to each regional office, including the average number of days it takes to complete a claim, the quality of decisions, and the percentage of claims considered backlogged. Those performance outcomes reflect that there are significant differences in how quickly and how accurately the various regional offices process disability claims. For example, VA's Monday Morning Workload Report reflects that, as of July 25, 2015, the percentage of claims backlogged at the regional offices ranged from less than 20 percent to nearly 50 percent and the claim-level accuracy ranged from less than 85 percent to more than 97 percent.

*Committee Bill.* Section 211(a) and (b) of the Committee bill would require GAO to complete a review of VA's regional offices in order to help the Veterans Benefits Administration achieve more consistent performance in the processing of claims for disability compensation. The review would include an identification of the factors that distinguish higher performing regional offices from other regional offices, including management practices; the best practices employed by higher performing regional offices that distinguish the performance of those offices from other regional offices; and other management practices or tools that could be used to improve the performance of regional offices.

The review would also include an assessment of the effectiveness of communication with respect to the processing of claims between the regional offices and veterans service organizations and caseworkers employed by Members of Congress.

The review must be completed by not later than 15 months after the date that is 270 days after the date of enactment. GAO would be required to submit to the Committee on Veterans' Affairs of the Senate and House of Representatives a report on the results of that review.

*Sec. 212. Inclusion in annual budget submission of information on capacity of Veterans Benefits Administration to process benefits claims.*

Section 212 of the Committee bill, which is derived from S. 1203 as introduced, would require VA to include in its annual budget submissions additional information regarding the capacity of the Veterans Benefits Administration to process claims for VA benefits.

*Background.* In its annual budget submission, VA typically includes information regarding the total number of claims for VA benefits that it expects to process in the year covered by the budget and the total number of staff VA is requesting to process those claims. However, the budget submission generally does not reflect a breakdown of the number of claims each employee should be able to process in a single year (without relying on mandatory overtime)

or the information VA would use to determine how many claims each employee should be able to process, such as a time and motion study. The budget submission also does not generally include an assessment of the claims processing initiatives that were funded by Congress in the prior budget year and what impact each initiative had on VA's ability to process claims. All of that information would allow Congress to better assess the efficacy of VA's staffing requests for claims processing employees and overall request for claims processing activities.

*Committee Bill.* In a freestanding provision, section 212(a) and (b) of the Committee bill would require VA to include in its annual budget submission information on the capacity of the Veterans Benefits Administration to process claims for VA benefits, including an estimate of the average number of claims for benefits that a single full-time equivalent employee can process in a year (excluding claims completed during mandatory overtime), based on a time and motion study and such other information as the Secretary considers appropriate; a description of the actions VA will take to improve the processing of claims; and an assessment of the actions VA identified in the previous year that would be taken to improve claims processing and the effects of those actions. This requirement would apply with respect to the budget submitted for FY 2017 and any fiscal year thereafter.

*Sec. 213. Report on staffing levels at regional offices of Department of Veterans Affairs after transition to National Work Queue.*

Section 213 of the Committee bill, which is derived from S. 1203 as introduced, would require VA to submit to Congress a report on the criteria and procedures that will be used to determine the appropriate staffing levels at regional offices once VA transitions to the National Work Queue.

*Background.* In general, each VA regional office has traditionally received claims from veterans and their families in the surrounding geographic area. The Veterans Benefits Administration would then use a tool—called the Resource Allocation Model—in order to determine how many claims processing employees to assign to each VA regional office based on the workload at that office. According to VA, the Resource Allocation Model “uses a weighted model to assign compensation and pension [full-time equivalent] resources based on regional office \* \* \* workload in rating receipts, rating inventory, non-rating receipts, and appeals receipts.” In FY 2016, the Veterans Benefits Administration plans to transition to a workload management system—called the National Work Queue—that will allow the VA Central Office to distribute claims-related workload among regional offices based on available capacity to handle that workload. Once VA transitions to that workload management system, it is unclear what factors will be considered in determining how to allocate employees among the regional offices.

*Committee Bill.* In a freestanding provision, section 213 of the Committee bill would require VA, not later than 15 months after enactment, to submit to the Committee on Veterans' Affairs of the Senate and House of Representatives a report on the criteria and procedures that VA will use to determine appropriate staffing levels at the regional offices once VA has transitioned to using the National Work Queue for the distribution of claims processing work.

*Sec. 214. Annual report on progress in implementing Veterans Benefits Management System.*

Section 214 of the Committee bill, which is derived from S. 1203 as introduced, would require VA to submit to Congress a report, not later than each of 1 year, 2 years, and 3 years after enactment, on the progress in implementing the Veterans Benefits Management System (hereinafter, “VBMS”).

*Background.* In response to the tremendous claims backlog, VA set out to transform the way it administers claims for benefits. In 2012, VBMS, a web-based electronic claims processing solution, was launched under a pilot program at five VA regional offices. As of today, VBMS is used at 148 VA facilities. According to VA, it moved from a points-based work credit system dependent on employee-user input to a system that can automatically capture employees’ transactions, activities, claims completions, and timeliness. VA has set a goal of eliminating the claims backlog in 2015 and processing all claims within 125 days with 98 percent accuracy.

The Committee has heard concerns about the ability of VBMS to process claims that are complicated or have a significant number of issues, as well as concerns over the interoperability of certain functions within VA with VBMS.

*Committee Bill.* In a freestanding provision, section 214 of the Committee bill would require VA to submit reports to Congress annually on the progress in implementing VBMS. The report is required to include an assessment of the current functionality of VBMS, recommendations submitted to VA by employees involved in claims processing for legislative or administrative action considered appropriate to improve the processing of claims, and recommendations submitted to VA by veterans service organizations who use VBMS for legislative or administrative action considered appropriate to improve the system.

The reporting requirement would sunset 3 years after enactment.

Given the importance of delivering benefits to our nation’s veterans in an accurate and timely manner, it is essential for VA to assess VBMS and solicit valuable recommendations from employees and veterans service organizations that use the system, while providing that information to Congress for oversight.

*Sec. 215. Report on plans of Secretary of Veterans Affairs to reduce inventory of non-rating workload.*

Section 215 of the Committee bill, which is derived from S. 1203 as introduced, would require VA to submit to Congress a report on VA’s plans to reduce the inventory of non-rating work pending at the Veterans Benefits Administration.

*Background.* In its Monday Morning Workload Report, the Veterans Benefits Administration reports its claims-related workload in a number of different categories, including rating-related work (such as initial claims for disability compensation) and non-rating work (such as requests for increased compensation based on addition of a dependent). Each category of work is given a specific label—called an End Product. In reporting its statistics on the “backlog” of disability claims, VA includes work items from only certain rating-related End Products.

In recent years, there has been a large increase in the number of pending non-rating work items that do not fall under VA’s defi-



dition of the backlog. In July 2014, the VA Inspector General's office testified before the House Committee on Veterans' Affairs that, "[a]lthough [the Veterans Benefits Administration's] reported backlog has decreased by over 50 percent since March 2013, other workloads such as appeals management and benefit reductions have had significant corresponding increases." In fact, between October 2010 and July 2015, the number of pending dependency adjustments for compensation recipients grew from less than 50,000 to more than 220,000. Over that period, similar increases have been seen in non-rating categories of work that VA labels as Correspondence (increased from 7,963 to 104,601), Miscellaneous determinations (increased from 26,700 to 142,058), Due process (increased from 19,540 to 125,707), and many others.

*Committee Bill.* In a freestanding provision, section 215 of the Committee bill would require VA, not later than 120 days after enactment, to submit to the Committee on Veterans' Affairs of the Senate and House of Representatives a report that details VA's plans to reduce the inventory of work items listed in the Monday Morning Workload Report under End Products 130 (Dependency—compensation), 137 (Dependency—pension), 173 (Pre-decisional hearings), 290 (Misc. determinations), 400 (Correspondence), 600 (Due process—compensation), 607 (Due process—pension), 690 (Cost of Living Adjustments and Social Security number verification), 930 (Review, including quality assurance), and 960 (Correction of errors).

*Sec. 216. Sense of Congress on increased transparency relating to claims for benefits and appeals of decisions relating to benefits in Monday Morning Workload Report.*

Section 216 of the Committee bill, which is derived from S. 1203 as introduced, would express the sense of Congress that VA should include in the Monday Morning Workload Report additional information regarding fully-developed claims and appeals.

*Background.* In July 2014, the VA Inspector General's office testified before the House Committee on Veterans' Affairs that "[a] key concern is the increased appeals inventory at [VA regional offices]" and that "[t]his workload has continued to grow at an alarming rate." Although VA's Monday Morning Workload Report includes some information about the number of pending appeals at the regional offices, it does not provide sufficient information to ascertain how well each regional office is performing with respect to its appeals inventory.

Similarly, VA's Web site includes information about the time it takes the Veterans Benefits Administration as a whole to complete disability claims that are fully-developed when submitted to VA but does not contain sufficient information to ascertain how well each regional office is performing with respect to those types of claims.

*Committee Bill.* Section 216 of the Committee bill would express the sense of Congress that VA should include in the Monday Morning Workload Report the number of fully-developed claims received by each regional office; the number of those claims that are pending at each office; and the number of those claims that have been pending a decision for more than 125 days. In addition, it would express the sense of Congress that VA should include in the Mon-

day Morning Workload Report enhanced information about pending appeals, including the information currently contained in VA reports entitled “Appeals Pending” and “Appeals Workload by Station.”

SUBTITLE C—OTHER BENEFITS MATTERS

*Sec. 221. Modification of pilot program for use of contract physicians for disability examinations.*

Section 221 of the Committee bill, which is derived from S. 1203 as introduced, would allow certain licensed physicians performing compensation and pension examinations pursuant to a contract with VA to perform the examinations in any state, territory, possession, Commonwealth, or the District of Columbia, without the need to obtain another license.

*Background.* Under section 504 of Public Law 104–275, VA was authorized to conduct a pilot program to use mandatory funding to provide compensation and pension examinations through the use of contractors. Currently, a physician providing an evaluation under this authority must be licensed in the state or territory in which the examination takes place. That means, if the contractor wishes to send its physicians to another state to help alleviate a backlog of examination requests, those physicians would first need to apply for a license in that other state. On the other hand, medical professionals who work directly for the Veterans Health Administration are authorized to work at VA facilities in any state or territory, as long as they are licensed in at least one state. In May 2015, VA testified before the Senate Committee on Veterans’ Affairs that granting a similar authority to these contract examiners “would help provide flexibility in examinations through non-VA medical providers while maintaining licensure standards and accelerating benefits delivery.”

*Committee Bill.* Section 221 of the Committee bill would modify the authority for the pilot program to provide that, notwithstanding any law regarding the licensure of physicians, a physician described below may conduct an examination pursuant to a contract entered into under the authority granted in Public Law 104–275 at any location in any state, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract. This new authority would apply to a physician who has a current license to practice the health care profession of the physician and is performing authorized duties for VA pursuant to a contract for compensation and pension examinations.

*Sec. 222. Development of procedures to increase cooperation with National Guard Bureau.*

Section 222 of the Committee bill, which is derived from S. 1203 as introduced, would require VA and the Chief of the National Guard Bureau to jointly develop and implement procedures to improve the timely provision to VA of records required to process claims for VA benefits.

*Background.* Under current law, section 5103A of title 38, U.S.C., VA has a duty to assist claimants in obtaining evidence necessary to substantiate a claim for benefits. This duty to assist requires VA

to obtain certain Federal records, including service treatment records. The Veterans Benefits Administration has often cited delays in obtaining service records as one reason for delays in processing disability claims, particularly for claims involving the Guard and Reserves.

*Committee Bill.* In a freestanding provision, section 222 of the Committee bill would require the Secretary of Veterans Affairs and the Chief of the National Guard Bureau to jointly develop and implement procedures, including requirements relating to timeliness, to improve the timely provision to VA of such information in the possession of the Chief as VA requires to process claims submitted to VA for benefits. Not later than 1 year after implementation of those procedures, VA and the Chief would be required to jointly submit to Congress a report describing the requests for information relating to records of members of the National Guard made by VA to the Chief pursuant to those procedures and the timeliness of the responses of the Chief to those requests.

*Sec. 223. Review of determination of certain service in Philippines during World War II.*

Section 223 of the Committee bill, which is derived from S. 151, would require VA to review the process used to determine whether certain individuals served in support of the Armed Forces of the United States during World War II.

*Background.* Public Law 111–5, the American Recovery and Reinvestment Act of 2009 (hereinafter, “ARRA”) authorized the payment of a one-time, lump-sum benefit to eligible World War II Philippine veterans. The deadline to apply for this benefit was February 16, 2010.

Under the ARRA, veterans who served before July 1, 1946, in the organized military forces of the government of the Commonwealth of the Philippines, while such forces were in the service of the Armed Forces of the United States, members of the organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander-in-Chief, Southwest Pacific Area, or other competent authority in the Army of the United States, and individuals who served in the Philippine Scouts under section 14 of the Armed Forces Voluntary Recruitment Act of 1945 were all eligible to apply for the benefit.

During the 1-year filing period, the Veterans Benefits Administration received 42,755 claims. As of August 1, 2015, 18,951 claims for benefits were granted; 23,804 claims were denied; and 9 reopened claims were pending. 4,561 appeals of denied claims were received; 63 appeals were still pending; and 3 appeals were overturned by the Board of Veterans’ Appeals.

Due to the difficulty in verifying eligible service, Filipino veteran advocates have expressed concern that the process for determining eligibility is flawed. Recognizing these concerns, in October 2012, the White House Initiative on Asian Americans and Pacific Islanders created the Filipino Veterans Equity Compensation Fund Interagency Working Group to analyze the process faced by Filipino veterans in demonstrating eligibility for the lump-sum benefit. The Interagency Working Group found the United States Army’s process to determine service is appropriate.

*Committee Bill.* In a freestanding provision, section 223 of the Committee bill would require VA to review the process used to determine whether Filipino veterans served in support of the Armed Forces during World War II. VA would be required to consult DOD and military historians recommended by DOD during this review and submit a report to the Committee on Veterans' Affairs of the Senate and House of Representatives detailing findings, actions taken, or recommendations for legislative action.

The Committee recognizes the actions already undertaken in this area. However, given the advanced age of veterans who might be eligible for the benefit, it is appropriate to make certain that all avenues for reviewing the process by which eligibility is determined have been exhausted.

*Sec. 224. Reports on Department disability medical examinations and prevention of unnecessary medical examinations.*

Section 224 of the Committee bill, which is derived from S. 666, would require VA to submit a report on the provision of medical examinations for purposes of adjudicating claims and a plan to prevent the ordering of unnecessary medical examinations.

*Background.* Under section 5125 of title 38, U.S.C., to establish eligibility for benefits VA may accept a report of a medical examination conducted by a private physician if the report is sufficiently complete to be adequate for purposes of adjudicating a claim.

Despite this authority, the Committee frequently hears concerns that VA dismisses private medical evidence and orders VA medical examinations despite sufficient private medical evidence, which could be used to make a decision on a claim. For example on March 13, 2013, Joseph Violante, Legislative Director of Disabled American Veterans at the time of the hearing, stated:

We hear from the field, from our people, that in some cases where the medical evidence is sufficient to be rated, the fact that it comes in from a private physician triggers an unnecessary examination.

VA has also acknowledged efficiencies may be achieved by reducing unnecessary medical examinations provided by VA. For example, in 2013, VA launched the Acceptable Clinical Evidence initiative to help alleviate the need for medical examinations provided by VA. This initiative allows VA medical providers to perform assessments without an in-person examination when sufficient information already exists. The Acceptable Clinical Evidence initiative enables a VA medical provider to complete a Disability Benefits Questionnaire by reviewing existing medical evidence and supplementing such evidence with information obtained during a telephone interview with the veteran. VA reports that this initiative has reduced the average time it takes to complete a Disability Benefits Questionnaire from 25 days to 8 days.

In evaluating claims for disabilities involving the musculoskeletal system, section 4.40 of title 38, Code of Federal Regulations (hereinafter, "C.F.R."), (Functional loss) requires an assessment of the impact of the disability on the performance of "the normal working movements of the body with normal excursion, strength, speed, coordination and endurance." Following the court's decision in *DeLuca v. Brown*, 8 Vet. App. 202 (1995), VA developed

a medical examination which evaluates the effect of repetitive motion on normal working movements, by having the claimant perform an activity three times in the examining physician's office.

During oversight visits, VA physicians have indicated to staff that the "three repetition requirement" does not provide a scientifically sound basis for evaluating the effect of repetitive motion on "normal working movements," such as those performed during a normal 8-hour work day. Physicians have expressed concern about the time it takes to perform repetitive motion actions on joints for which no disability is alleged.

*Committee Bill.* Section 224 of the Committee bill would, in a freestanding provision, require VA to submit, within 18 months of enactment, a report on the provision of medical examinations for purposes of adjudicating claims and a plan to prevent the ordering of unnecessary medical examinations. There are two distinct reporting requirements contained in section 224 of the Committee bill.

The first reporting requirement requires VA to submit a report on the furnishing of general medical and specialty medical examinations. The report must include the number of general medical examinations furnished by VA during FY 2011 through FY 2014. The report must also include the number of specialty medical examinations furnished by VA during the same time period. Additionally, the report must include a summary of medical and scientific studies that provide a basis for determining that three repetitions of a joint movement is adequate to assess the effect of repetitive motion on functional loss when assessing range of motion during joint examinations. The report must identify all examination reports used for evaluation of compensation and pension disability claims which require measurements of repeated ranges of motion testing. Finally, the report would include the number of examinations for FY 2014 that required such measurements, the average amount of time taken to perform the three repetitions of movement method for each joint, a discussion of whether there are more efficient and effective methods of testing range of motion, and recommendations on whether to continue the practice of measuring functional impairment by using the three repetitions of movement method.

The second reporting requirement requires VA to submit a report on VA efforts to reduce the need for in-person disability examinations and use of the authority provided by section 5125 of title 38, U.S.C. This report would contain information on the Acceptable Clinical Evidence initiative. It would also contain information on any other efforts to further encourage the use of medical evidence provided by a private health care provider and the reliance upon reports of a medical examination or a medical opinion administered by a private physician if such report is sufficiently complete to be adequate for the purposes of adjudicating a claim for service-connection. Under this second requirement, VA would also have to submit a plan to measure, track, and prevent the ordering of unnecessary medical examinations and actions to eliminate requests for medical examinations when the record contains medical evidence and/or opinions provided by a private health care provider that is adequate for purposes of making a decision on a claim.

Further, Congress has provided authority to allow VA to accept private medical evidence and take actions consistent with this au-

thority to improve the timeliness and accuracy of claims decisions. It is the Committee's intent that VA continue to ensure medical examinations are appropriate and used efficiently.

*Sec. 225. Sense of Congress on submittal of information relating to claims for disabilities incurred or aggravated by military sexual trauma.*

Section 225 of the Committee bill, which is derived from S. 865, would express the sense of Congress that VA should submit an annual report to Congress on claims for disabilities alleged to have been incurred or aggravated by military sexual trauma.

*Background.* VA's efforts to improve the adjudication of disability claims based on military sexual trauma remains an issue of concern to the Committee. In the "Department of Defense Fiscal Year 2014 Annual Report on Sexual Assault in the Military," DOD estimates that 18,900 servicemembers experienced unwanted sexual contact in 2014, which is a decrease from the 26,000 servicemembers estimated in 2012. Other data, derived from VA's national screening program, reveal that about 1 in 4 women and 1 in 100 men receiving health care at VA report experiencing military sexual trauma.

The Committee has received testimony from advocacy groups stressing the need for continued oversight of VA's efforts to improve the adjudication of disability claims related to military sexual trauma.

*Committee Bill.* Section 225 of the Committee bill, in a free-standing provision, would express the sense of Congress that VA should submit an annual report to Congress on claims for disabilities alleged to have been incurred or aggravated by military sexual trauma.

Section 225 of the Committee bill specifies that the contents of each such report should include specific information on the adjudication of disability claims related to military sexual trauma. Specifically, the report would include (1) the number and percentage of claims submitted by each gender that were approved and denied; (2) the rating percentage assigned for claims that were approved disaggregated by gender; (3) the three most common reasons for denials; and (4) the number of denials based on the failure of a veteran to report for a medical examination. The report should include this same information for claims that were resubmitted after a denial in a previous adjudication. Finally, the annual report should also include the number of claims pending and on appeal and the average number of days from submission to completion of a claim during the past fiscal year.

The Committee recognizes VA's ongoing efforts to improve the adjudication of claims based on military sexual trauma. However, continued oversight, such as the reporting requirements of this section, would allow the Committee to make more informed decisions about what future action, if any, may be necessary to ensure survivors of military sexual trauma receive the benefits to which they are entitled.

## TITLE III—EDUCATION MATTERS

*Sec. 301. Retention of entitlement to educational assistance during certain additional periods of active duty.*

Section 301 of the Committee bill, which is an original provision, would add two active duty authorities to the existing authorities under which a Reservist may regain lost payments or lost entitlement for the Montgomery GI Bill-Selected Reserve program if activation under such authority prevented the completion of his/her studies.

*Background.* Section 12304a of title 10, U.S.C., allows the Secretary of Defense to order any Reserve unit, or member not assigned to a unit, to active duty for up to 120 days in order to respond to a Governor's request for Federal assistance in a major disaster or emergency. Section 12304b of title 10, U.S.C., authorizes military Secretaries to order up to 60,000 members of the Selected Reserve to active duty for a period up to 365 days in order to augment active forces for preplanned missions. Under both of these authorities, a servicemember may be ordered to active duty without his/her consent and the notification requirements and length of typical mobilizations make it unlikely such service would require a Reserve member to not complete a course in which he/she is enrolled, but it remains a possibility.

Sections 16131 and 16133 of title 10, U.S.C., list five authorities for mobilizing the Reserves under which a Reservist receiving educational assistance under the Montgomery GI Bill-Selected Reserve program would not have such assistance charged against his/her entitlement to benefits. This prevents Reservists from losing benefits when service under these authorities interrupts their studies and prevents them from earning credit for a certain term.

Section 522 of the DOD legislative proposals sent to Congress for inclusion in the FY 2016 National Defense Authorization Act contained the provisions now included in section 301 of the Committee bill.

*Committee Bill.* Section 301 of the Committee bill would add sections 12304a and 12304b of title 10, U.S.C., to the list of authorities in sections 16131 and 16133 of title 10, U.S.C., under which a Reservist may regain lost payments and lost entitlement for Montgomery GI Bill-Selected Reserve education benefits when that activation authority prevented the Reservist from completing his/her studies.

*Sec. 302. Reports on progress of students receiving Post-9/11 Educational Assistance.*

Section 302 of the Committee bill, which is an original provision, would require educational institutions to report annually to VA on the academic progress of students for whom it receives payments under the Post-9/11 GI Bill. The Secretary of Veterans Affairs would be required to include this information in the annual report to Congress on the Post-9/11 GI Bill.

*Background.* The National Defense Authorization Act of FY 2013 (Public Law 112-239) established the Military Compensation and Retirement Modernization Commission (hereinafter, "MCRMC") to conduct a review of the military compensation and retirement systems and to make recommendations to modernize such systems.

The MCRMC issued its final report in January 2015 that included 15 recommendations around Pay and Benefits, Health Benefits, and Quality of Life for Servicemembers and Retirees. Recommendations 11 and 12 focused largely on education benefits and transition programs. In May 2015, the MCRMC issued an addendum to its report.

Since its inception in 2009, the Post-9/11 GI Bill has paid \$53 billion on behalf of more than 1.4 million beneficiaries. The MCRMC Addendum suggested that gaining a better understanding of the benefit, how it is used, and its impact on beneficiaries will help inform any potential future changes to the benefit. VA is currently required to submit to Congress an annual report on the completion of credit hours and educational objectives by beneficiaries using the Post-9/11 GI Bill. In its February 2014 report to Congress, VA recommended requiring educational institutions to provide additional information on the progress of students using Post-9/11 GI Bill benefits.

Section 1109 of the legislative proposals in the report of the MCRMC Addendum included the material that is now contained in section 302 of the Committee bill.

*Committee Bill.* Section 302 of the Committee bill would add a new section 3326 to chapter 33 of title 38, U.S.C. The new section would require that any educational institution receiving payments for beneficiaries using the Post-9/11 GI Bill report annually to the Secretary of Veterans Affairs on each beneficiary's academic progress towards his/her educational objective. Section 302 of the Committee bill would also amend section 3325(c) of title 38, U.S.C., to require the Secretary of Veterans Affairs to include in the report to Congress required by that section the information reported by educational institutions under new section 3326 of title 38, U.S.C.

*Sec. 303. Secretary of Defense report on level of education attained by those who transfer entitlement to Post-9/11 educational assistance.*

Section 303 of the Committee bill, which is an original provision, would require the Secretary of Defense to include in its annual report to Congress on the Post-9/11 GI Bill the highest level of education attained by each individual who transfers his/her Post-9/11 GI Bill benefits to eligible dependents.

*Background.* Under section 3319 of title 38, U.S.C., certain servicemembers who are eligible for the Post-9/11 GI Bill and meet other eligibility criteria may be permitted to transfer the unused portion of their Post-9/11 GI Bill benefits to one or more dependent. The MCRMC's final report noted that the impact of making changes to these criteria for transferring benefits is not well understood. The MCRMC recommendation to collect more information on who is transferring their unused Post-9/11 GI Bill benefits supports the idea that a better understanding of the people who transfer benefits and their motivations for doing so will allow the Department of Defense to improve the use of transferability as a retention tool.

Section 1105 of the legislative proposals in the report of the MCRMC included the material now contained in section 303 of the Committee bill.



*Committee Bill.* Section 303 of the Committee bill amends section 3325(b) of title 38, U.S.C., to add to it a requirement that the Secretary of Defense include in the annual report to Congress the highest level of education attained by each individual who transfers a portion of his/her entitlement to educational assistance under section 3319 of title 38, U.S.C. This new requirement would take effect 1 year after enactment of this bill.

*Sec. 304. Reports on educational levels attained by certain members of the Armed Forces at time of separation from the Armed Forces.*

Section 304 of the Committee bill, which is an original provision, would require the Secretary concerned to collect upon separation the highest level of education attained by each member of the Armed Forces. The Secretary concerned would be required to submit that information to Congress annually beginning 1 year after enactment of this bill.

*Background.* In its final report, the MCRMC noted that DOD is not collecting data on the educational levels of those who transfer their Post-9/11 GI Bill benefits and DOD has only limited data on those servicemembers who use the Post-9/11 GI Bill or Tuition Assistance. The MCRMC's recommendation to collect information at the point of separation from service regarding the education level attained by those transferring their unused Post-9/11 GI Bill benefits is intended to improve the understanding of how use or transfer of the benefits impacts the educational levels of servicemembers.

Section 1106 of the legislative proposals in the report of the MCRMC included the material now contained in section 304 of the Committee bill.

*Committee Bill.* In a freestanding provision, section 304 of the Committee bill requires each military service Secretary to report annually to Congress on the educational levels attained by certain members of the Armed Forces at the time they separated from the Armed Forces during the preceding year. This report is only applicable to members of the Armed Forces who transferred unused education benefits to family members pursuant to section 3319 of title 38, U.S.C., while serving as members of the Armed Forces.

#### TITLE IV—EMPLOYMENT AND TRANSITION MATTERS

*Sec. 401. Required coordination between Directors for Veterans' Employment and Training with State departments of labor and veterans affairs.*

Section 401 of the Committee bill, which is an original provision, would require the Department of Labor's Director of Veterans' Employment and Training for each state to coordinate his/her activities with the state agencies for labor and veterans affairs.

*Background.* Pursuant to section 4103 of title 38, U.S.C., the Department of Labor is required to assign to each state a Director for Veterans' Employment and Training to serve as a representative of the Department of Labor's Veterans' Employment and Training Service.

In its final report from January 2015, the MCRMC noted that unemployment remains a challenge for many transitioning vet-

erans. The report cited feedback from veterans who shared experiences where employers' lack of understanding about military service prevented them from being hired. The report also noted that most employment services for veterans are administered by labor departments at the state level and not by each state's veterans agency. Any deficiency in that state labor department's understanding of veterans' unique employment challenges poses additional barriers to the success of its Jobs for Veterans State Grant (hereinafter, "JVSG") program. The report did note, however, that Texas administered its veterans employment services as part of the JVSG program via its Texas Veterans Commission. The report cited the testimony of Rear Admiral W. Clyde Marsh, USN (Ret.), President of the National Association of State Directors of Veterans Affairs, where he suggested the JVSG program would benefit from increased coordination with the state veterans affairs directors.

Section 1202 of the legislative proposals in the report of the MCRMC Addendum included the material that is now contained in section 401 of the Committee bill.

*Committee Bill.* Section 401 of the Committee bill adds a requirement to section 4103 of title 38, U.S.C., requiring each Director for Veterans' Employment and Training in a state to coordinate his/her activities with the state's departments of labor and veterans affairs. This new requirement would take effect 1 year after the enactment of the Committee bill.

*Sec. 402. Report on job fairs attended by One-Stop Career Center employees at which such employees encounter veterans.*

Section 402 of the Committee bill, which is an original provision, would require an annual report from states to include the number of job fairs attended by One-Stop Career Center employees at which they had contact with a veteran and the number of veterans at each event so contacted.

*Background.* The MCRMC noted in its final report from January 2015 that One-Stop Career Centers, which are part of state workforce agencies or employment commissions, are significant providers of employment services for veterans after they leave military service. The staff at these centers includes those focused solely on serving veterans with significant barriers to employment as well as staff who serve both veterans and non-veterans. The services that may be provided to veterans may vary depending on their employment needs and specific situations. One way for the One-Stop Career Center staff to connect with veterans in need of services is to attend job fairs and conduct outreach. Because these outreach connections are not tracked, it is difficult to evaluate whether or not attending these job fairs increases successful outcomes.

Section 1201 of the legislative proposals in the report of the MCRMC Addendum included the material that is now contained in section 402 of the Committee bill.

*Committee Bill.* Section 402 of the Committee bill adds a requirement to section 136(d)(1) of Public Law 105-220, the Workforce Investment Act of 1998, that the number of job fairs attended by One-Stop Career Center employees where veterans were contacted, along with the number of veterans contacted, be included in the annual reports submitted to Congress. This requirement would take effect 1 year after enactment of the bill.

*Sec. 403. Review of challenges faced by employers seeking to hire veterans and sharing of information among Federal agencies that serve veterans.*

Section 403 of the Committee bill, which is an original provision, would require the Secretary of Labor to review the challenges employers face in hiring veterans and the information sharing among Federal departments and agencies serving veterans and separating servicemembers.

*Background.* In its final report from January 2015, the MCRMC noted reports both from employers and from veterans that it remained difficult for employers to find veterans with the right skills to fill open positions. The MCRMC also shared feedback from employers that veterans seemed to lack the employment skills necessary to network and find jobs for which they could apply. Although transition classes, employment services, and other benefits are provided to veterans, the employers who hire veterans are the ultimate audience for the skills and practices these services provide to the veterans. A thorough understanding of where employers face difficulties connecting with veteran job seekers and where there are gaps in bridging military and civilian skills could improve the substance and delivery of employment training provided to transitioning servicemembers and veterans.

Section 1203 of the legislative proposals in the report of the MCRMC Addendum included the material now contained in section 403 of the Committee bill.

*Committee Bill.* In a freestanding provision, section 403 of the Committee bill directs the Secretary of Labor, in consultation with the Secretaries of Defense and Veterans Affairs, to review the challenges employers face in hiring veterans and information sharing among Federal agencies that serve separating members of the Armed Forces and veterans. The review specifically includes barriers employers face identifying job-seeking veterans and the ways in which Federal departments and agencies that serve veterans and separating servicemembers may more easily connect them with employers. The Secretary of Labor would be required to submit to Congress recommendations on addressing the barriers employers face as described in the review along with recommendations on improving information sharing by the Federal departments and agencies serving veterans and servicemembers. These recommendations would be due 120 days after the effective date of the Committee bill, which would be 1 year after its passage.

*Sec. 404. Review of Transition GPS Program Core Curriculum.*

Section 404 of the Committee bill, which is an original provision, would require the Secretary of Defense, in consultation with the Secretaries of Veterans Affairs and Labor, to review the Transition GPS Core Curriculum and report to Congress recommendations on its effectiveness, allocation of the roles and responsibilities of Federal departments in the program, optimizing each topic by length of instruction and whether or not it is mandatory, and developing metrics for assessment of the program.

*Background.* Transition GPS is the curriculum delivered to transitioning servicemembers prior to their separation from the Armed Forces. It includes mandatory subjects on transition, resiliency, translating military skills, financial planning, and VA benefits.

There are also optional class tracks on accessing higher education, pursuing technical careers, and entrepreneurship. The MCRMC's final report notes that the Departments of Labor and Defense are of the view that Transition GPS has areas that can be improved. One possible change is making the optional tracks mandatory based on the individual servicemember's transition plan. Another area of potential improvement mentioned is measuring outcomes from the curriculum. The report cites a GAO study that concluded current metrics for evaluating outcomes were "incomplete."

The Transition GPS curriculum is the foundation for servicemembers' transition experience when they leave the Armed Forces. It sets up expectations for what they will encounter after separation and provides skills and tools with which to navigate life as a civilian. Continued evaluation and refinement of the curriculum is important to achieving the highest standard of quality in subject matter and to ensure that subject matter is current with the evolving standards of career skills, educational practices, and business processes.

Section 1204 of the legislative proposals in the report of the MCRMC Addendum included the material that is now contained in section 404 of the Committee bill.

*Committee Bill.* In a freestanding provision, section 404 of the Committee bill would require the Secretary of Defense, in consultation with the Secretaries of Veterans Affairs and Labor, to conduct a review of the Transition GPS Core Curriculum. The review would include the roles and responsibilities of the various Federal departments and agencies involved in the program, the distribution of time spent on the various topics covered by the curriculum, whether any of the optional tracks should be mandatory, and the feasibility of standard outcome measures and metrics for evaluating the program. The Secretary of Defense would be required to report to Congress within 120 days of the effective date of this section of the Committee bill the results of this curriculum review and any recommendations for improving the curriculum, the delivery of the curriculum, and the measurement of its outcomes.

*Sec. 405. Modification of requirement for provision of preseparation counseling.*

Section 405 of the Committee bill, which is an original provision, would clarify that preseparation counseling shall not be provided to a servicemember discharged before completion of 180 continuous days on active duty.

*Background.* Section 1142 of title 10, U.S.C., currently prohibits the provision of preseparation counseling to servicemembers being discharged from service before they complete their first 180 days of active duty. The current language could be interpreted to mean any combination of 180 days of active service, even if they were not consecutive days of service. Such a scenario could apply to Reservists or members of the National Guard ordered to active duty for multiple periods of less than 180 days.

Section 545 of the DOD legislative proposals sent to Congress for inclusion in the FY 2016 National Defense Authorization Act included the material now contained in section 405 of the Committee bill.

*Committee Bill.* Section 405 of the Committee bill would amend section 1142 of title 10, U.S.C., to insert “continuous” before “180 days.” It would also clarify the meaning of “active duty” in section 1142 of title 10, U.S.C., to exclude full-time training duty, annual training duty, or attendance at a service school while on active duty.

#### TITLE V—VETERAN SMALL BUSINESS MATTERS

*Sec. 501. Modification of treatment under contracting goals and preferences of Department of Veterans Affairs for small businesses owned by veterans of small businesses after death of disabled veteran owners.*

Section 501 of the Committee bill, which is derived from S. 296, would permit the surviving spouse of a veteran owner of a small business, who is less than 100 percent disabled and whose death is not a result of a service-connected disability, to maintain the status of such small business concern for up to 3 years following the death of such veteran.

*Background.* Under current law, section 8127(h) of title 38, U.S.C., if the death of a veteran causes a small business to be less than 51 percent owned by one or more veterans, the surviving spouse may be treated as if the surviving spouse is the veteran under limited circumstances for up to 10 years for the purpose of receiving contracting preferences from VA. Specifically, the spouse can only retain the status as a service-disabled veteran-owned small business (hereinafter, “SDVOSB”) if, following the death of the veteran owner, the spouse acquires ownership rights of at least 51 percent and the veteran had a service-connected disability rated as 100 percent disabling or if the veteran died as a result of a service-connected condition.

For spouses not covered by section 8127(h), the small business concern immediately loses the SDVOSB designation, thus precluding them from benefiting from future VA procurement preferences.

*Committee Bill.* Section 501 of the Committee bill would amend section 8127(h) of title 38, U.S.C., by providing that the surviving spouse may retain the SDVOSB designation for a period of up to 3 years in cases where the veteran had a service-connected disability rated at less than 100 percent or who did not die as a result of a service-connected condition.

The Committee is concerned that surviving spouses may be forced to quickly sell the company or go out of business following the death of a disabled veteran if the small business loses the SDVOSB designation immediately upon death of the veteran. The 3-year period will provide adequate time for the surviving spouse to evaluate what course of action is appropriate for the small business following the death of the veteran.

*Sec. 502. Treatment of businesses after deaths of servicemember owners for purposes of Department of Veterans Affairs contracting goals and preferences.*

Section 502 of the Committee bill, which is derived from S. 296, would permit the surviving spouse of a servicemember who owns at least 51 percent of a small business concern and dies in the line

of duty to maintain the status of such small business concern for up to 10 years following the death of such servicemember.

*Background.* Current law, section 8127 of title 38, U.S.C., requires VA to establish contracting goals for veteran-owned small businesses (hereinafter, “VOSBs”) and SDVOSBs. Further, the section grants VA authority to use certain contracting preferences to meet established goals and requires a VOSB or SDVOSB to be certified as eligible by VA prior to being awarded a contract under this section. To be eligible, a former servicemember must be a veteran as defined by section 101(2) of title 38, U.S.C. A servicemember who is wounded in action, upon discharge, will meet the statutory definition of a veteran and become eligible for certain VA contracting preferences. Current law provides, under section 8127(h) of title 38, U.S.C., that if a wounded veteran establishes eligibility and is certified as an SDVOSB, the surviving spouse can retain the designation for VA contracting preferences if the veteran dies and is rated as 100 percent disabled or dies as a result of a service-connected disability. However, if a servicemember dies on active duty in the line of duty, he/she will never have the ability to apply for the SDVOSB designation, and any surviving spouse or dependent would not be viewed as an SDVOSB for the purposes of VA contracting following the servicemember’s death.

*Committee Bill.* Section 502 of the Committee bill would amend section 8127 of title 38, U.S.C., by inserting a new subsection (i). The new subsection would provide that, if a member of the Armed Forces dies in the line of duty while on active duty and owned at least 51 percent of a small business prior to his or her death, the surviving spouse or dependent, who acquired the ownership rights of the small business, will be treated as a service-disabled veteran for the purposes of SDVOSB certification and VA contracting preferences.

Surviving spouses may retain the SDVOSB designation until the date they remarry, the date they no longer own and control 51 percent of the small business, or the date that is 10 years after the death of the servicemember. Dependents may retain the designation until they no longer own and control 51 percent of the small business or the date which is 10 years after the death of the servicemember.

SDVOSB contracting goals and preferences are designed to help service-disabled veterans lead productive and fulfilling lives after their military service by recognizing the sacrifice of those who were wounded in service to their country. The Committee believes extending the SDVOSB designation to surviving spouses and dependents, who have lost family members in the line of duty, is a small recognition of their sacrifice and may assist them in successfully operating their businesses.

#### TITLE VI—BURIAL MATTERS

*Sec. 601. Department of Veterans Affairs study on matters relating to burial of unclaimed remains of veterans in national cemeteries.*

Section 601 of the Committee bill, which is derived from S. 695, would require VA to complete a study on matters relating to the

interring of unclaimed remains of veterans in national cemeteries and submit a report to Congress on the findings of the study.

*Background.* The Dignified Burial and Other Veterans' Benefits Improvements Act of 2012, Public Law 112–260, authorized burial of the unclaimed remains of a veteran in a national cemetery when no known next-of-kin was able to make the request for the burial benefit. The Missing in America Project has worked to identify unclaimed remains and assist in the interment of unclaimed remains identified as those of a veteran. They have identified and helped inter over two thousand unclaimed remains of veterans. Identifying and then interring the unclaimed remains of veterans requires coordination and cooperation between government and nongovernment entities, as well as coordination between local, state, and Federal entities. There are also various local and state laws that apply to the interring of unclaimed remains. Additionally, there is a need to make all the appropriate entities aware that the unclaimed remains of veterans may qualify for this benefit.

*Committee Bill.* In a freestanding provision, section 601 of the Committee bill directs the Secretary of Veterans Affairs to conduct a study and report to Congress on various matters relating to the interment of unclaimed remains of veterans in national cemeteries. The study would include an estimate of the number of unclaimed remains, an assessment of state and local laws impacting the interment of unclaimed remains, and an assessment of VA procedures for working with other entities in custody of the unclaimed remains of veterans. Section 601 of the Committee bill also provides for a methodology for the study to look at a subset of those entities having custody of the unclaimed remains and a subset of applicable state and local laws that impact the interment of unclaimed remains. This section would take effect 1 year after enactment of the Committee bill and the report to Congress would be required 1 year after the effective date.

#### TITLE VII—OTHER MATTERS

*Sec. 701. Honoring as veterans certain persons who performed service in the Reserve components of the Armed Forces.*

Section 701 of the Committee bill, which is derived from S. 743, would recognize the service of certain individuals in the Reserve components of the Armed Forces by honoring them as veterans.

*Background.* Under current law, section 101(2) of title 38, U.S.C., for purposes of determining eligibility for benefits administered by VA, a veteran is defined as “a person who served in the active military, naval, or air service, and who was discharged or released therefrom under conditions other than dishonorable.” As such, a member of the Reserve components who is eligible for retirement pay, or in receipt of retired pay, who did not have qualifying active duty service, is not recognized as a veteran for purposes of eligibility for certain VA benefits. This has led to some confusion as to whether an individual who served in the Reserves, but did not have qualifying active duty service, should be referred to as a “veteran” for purposes other than determining eligibility for VA benefits.

*Committee Bill.* Section 701 of the Committee bill would, in a non-codified provision, honor as a veteran those individuals who

are entitled under chapter 1223 of title 10, U.S.C., to retired pay for irregular service or who would be entitled to retired pay, but for age. Section 701 would ensure those who are honored as “veterans” under this section would not be entitled to any VA benefit by reason of such recognition.

*Sec. 702. Report on Laotian military support of Armed Forces of the United States during Vietnam War.*

Section 702 of the Committee bill, which is derived from S. 1358, would require VA, in consultation with DOD and such agencies or individuals VA considers appropriate, to submit a report to Congress on the extent to which Laotian military forces provided combat support to the Armed Forces of the United States between February 28, 1961, and May 15, 1975; whether the current classification by the DOD Civilian/Military Service Review Board is appropriate; and any recommendations for legislative action.

*Background.* Due to American involvement in South-East Asia in the 1960s, Laos became a focal point for both American and North Vietnamese operations. Due to the limited ability of formal Laotian forces to stop cross border threats and stymie North Vietnamese supply lines, the United States began to train and supply Hmong guerillas in Laos.<sup>1</sup> The Hmong “Special Guerrilla Units” were trained by members of the Central Intelligence Agency (hereinafter, “CIA”). This effort by the CIA became known as the CIA’s “Secret War.”<sup>2</sup> The Hmong were primarily responsible for interrupting communist supply lines and rescuing downed pilots.<sup>3</sup> Given the secrecy that surrounded the program, establishing concrete figures for the number of Hmong guerillas who fought along-side American forces during this period is challenging. One estimate claims it was in the tens of thousands.<sup>4</sup> Casualties amongst this cohort mounted rapidly. A source indicates that by 1975, 100,000 Hmong had been killed.<sup>5</sup> After the fall of Saigon and the takeover of Laos by communist forces, the CIA stopped all further assistance to the Hmong. This discontinuation of support by the CIA effectively left the Hmong to fend for themselves.<sup>6</sup> Those who remained sought refuge in neighboring Thailand, while others fled to the United States.

Consequently, over the years, concern over the treatment of the Hmong has been expressed. In recent years, members of Congress have argued for interment rights at national cemeteries for these individuals. During the 114th Congress, Senator Murkowski introduced S. 1358, which would grant certain burial benefits to former Hmong guerillas who qualify. Although rare, the United States has granted certain benefits to other groups who have assisted American war efforts including certain Filipino veterans who served under American command during World War II.

However, given the protracted covert nature of events in South-East Asia during the Cold War, questions have been raised about

<sup>1</sup> Tim Weiner, Gen. Vang Pao’s Last War, New York Times Magazine, May 11, 2008. [http://www.nytimes.com/2008/05/11/magazine/11pao-t.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2008/05/11/magazine/11pao-t.html?pagewanted=all&_r=0)

<sup>2</sup> John Prados, Laos: The Geneva Protocol and the Not-So-Secret War, Vietnam Veterans of America. <http://www.vva.org/veteran/0207/laos.html>

<sup>3</sup> William Lloyd-George, The CIA’s “Secret War,” The Diplomat, February 25, 2011. <http://thediplomat.com/2011/02/25/the-cia%E2%percent80 percent99s-secret-war/?all=true>

<sup>4</sup> Weiner

<sup>5</sup> Lloyd-George

<sup>6</sup> Weiner



the ability to verify and document individuals' claims about participation as well as whether or not these individuals acted in accordance with norms associated with the law of armed conflict. Recognizing the difficulty of answering these questions, the Committee developed a compromise proposal to get a better understanding of the Hmong involvement in American operations during the Vietnam War.

*Committee Bill.* In a freestanding provision, section 702 of the Committee bill would require VA to submit to Congress a report documenting the extent to which Laotian military forces provided combat support to the Armed Forces of the United States between February 28, 1961, and May 15, 1975. This report requires consultation with DOD and any other agencies or individuals VA considers appropriate in order to determine whether the current classification by the DOD Civilian/Military Service Review Board is fitting and if further legislative action is necessary.

*Sec. 703. Restoration of prior reporting fee multipliers.*

Section 703 of the Committee bill, which is an original provision, would revert to the 2011 rates the reporting fees that are paid to educational institutions.

*Background.* Section 3684(c) of title 38, U.S.C., provides for the payment of reporting fees to educational and training institutions based on the number of veterans or other eligible students enrolled. The amount paid per eligible student is currently \$9 or, in the case of an institution that accepts advance payments from VA, \$13 per student. On September 26, 2016, those rates are scheduled to increase to \$12 and \$15, respectively.

Previously, the reporting fees paid to educational and training institutions by VA was increased from \$5 and \$6 to \$7 and \$11, respectively, in 1977 by section 304 of Public Law 95-202, the GI Bill Improvements Act. The \$12 and \$15 fee payment structure was later established in 2011 by section 204 of Public Law 111-377, the Post-9/11 Veterans Educational Assistance Improvements Act of 2010. Then, section 406 of Public Law 113-175 shifted the fees from \$12 and \$15 to \$9 and \$13 for a 1-year period following enactment of that law, and section 410 of Public Law 114-58 lengthened it to a 2-year period. Upon expiration of that 2-year period, the fees are scheduled to increase to \$12 and \$15. In contrast, under the Federal Pell Grant Program, institutions of higher learning receive \$5 per grant to administer and distribute Federal Pell awards.

*Committee Bill.* Section 204 of the Committee bill would amend section 3684(c) of title 38, U.S.C., to decrease for a 10-year period the reporting fees paid by VA to educational and training institutions to \$7 and \$11, respectively. This change would take effect on enactment of the Committee bill.

The Committee is of the opinion that the tuition dollars paid, and a lower reporting fee provided, to education and training institutions is adequate in offsetting any overhead created on the school's part in administering the benefit.

#### COMMITTEE BILL COST ESTIMATE

In compliance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate, the Committee, based on information supplied by the Congressional Budget Office (hereinafter, "CBO"), estimates

that enactment of the Committee bill would, relative to current law, increase discretionary spending by \$124 million over the 2016–2020 period and would reduce direct spending by \$60 million over the 2016–2025 period. Enactment of the Committee bill would not affect the budget of state, local, or tribal governments.

The cost estimate provided by CBO, setting forth a detailed breakdown of costs, follows:

CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, October 1, 2015.*

Hon. JOHNNY ISAKSON,  
*Chairman,*  
*Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 1203, the 21st Century Veterans Benefits Delivery and Other Improvements Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is David Newman.

Sincerely,

KEITH HALL,  
*Director.*

Enclosure.

*S. 1203—21st Century Veterans Benefits Delivery and Other Improvements Act*

Summary: S. 1203 contains provisions that would modify employment and compensation levels at the Department of Veterans Affairs (VA), expand training for medical staff, and require the agency to post additional material on its website. In total, CBO estimates that implementing the bill would cost \$124 million over the 2016–2020 period, subject to appropriation of the necessary amounts.

In addition, enacting S. 1203 would reduce administrative costs for veterans' education benefits and restore such benefits to a small number of military personnel who were unable to complete a term of instruction because of certain types of deployments. In total, those changes would decrease direct spending by \$60 million over the 2016–2025 period.

Pay-as-you-go procedures apply because enacting the legislation would affect direct spending. Enacting the bill would not affect revenues.

S. 1203 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would benefit public institutions of higher education that participate in educational programs under the GI Bill. Any costs those entities might incur, including reductions in fee payments from VA, would be incurred as conditions of participating in a voluntary federal program.

Estimated cost to the Federal Government: The estimated budgetary effect of S. 1203 is shown in Table 1. The costs of this legislation fall within budget function 700 (veterans benefits and services).

Table 1.—Budgetary Effects of S. 1203, The 21st Century Veterans Benefits Delivery and Other Improvements Act

	By fiscal year, in millions of dollars—					
	2016	2017	2018	2019	2020	2016–2020
CHANGES IN SPENDING SUBJECT TO APPROPRIATION						
Competitive Pay for Physician Assistants						
Estimated Authorization Level .....	12	16	17	19	21	85
Estimated Outlays .....	11	15	17	19	21	83
Pilot Program for Intermediate Care Technicians						
Estimated Authorization Level .....	0	3	3	3	3	12
Estimated Outlays .....	0	3	3	3	3	12
Chiropractic Care						
Estimated Authorization Level .....	0	0	3	3	3	9
Estimated Outlays .....	0	0	3	3	3	9
Training for Mental Health Professionals						
Estimated Authorization Level .....	1	1	2	2	2	8
Estimated Outlays .....	1	1	2	2	2	8
Prosthetic and Orthotic Care						
Authorization Level .....	0	5	0	0	0	5
Estimated Outlays .....	0	3	1	1	0	5
Data Sharing						
Estimated Authorization Level .....	0	1	1	1	1	4
Estimated Outlays .....	0	1	1	1	1	4
Reports						
Estimated Authorization Level .....	*	1	1	1	*	3
Estimated Outlays .....	*	1	1	1	*	3
Total Changes in Spending Subject to Appropriation						
Estimated Authorization Level .....	13	27	27	29	30	126
Estimated Outlays .....	12	24	28	30	30	124
CHANGES IN DIRECT SPENDING						
Payments for Reports <sup>a</sup>						
Estimated Budget Authority .....	-6	-6	-6	-6	-6	-30
Estimated Outlays .....	-6	-6	-6	-6	-6	-30

Note: \* = less than \$500,000.

<sup>a</sup>In addition to the changes in direct spending shown above, S. 1203 would have effects beyond 2020. CBO estimates that enacting S. 1203 would decrease direct spending by \$60 million over the 2016–2025 period.

**Basis of estimate:** For this estimate, CBO assumes that S. 1203 will be enacted near the beginning of fiscal year 2016, that the estimated amounts will be appropriated each year, and that outlays will follow historical spending patterns for affected programs.

#### *Spending subject to appropriation*

CBO estimates that implementing S. 1203 would increase personnel and administrative costs at VA by a total of \$124 million over the 2016–2020 period, subject to appropriation of the necessary amounts.

*Competitive Pay for Physician Assistants (PAs).* Section 123 would require VA to compensate PAs at rates that are competitive with those paid by other health care providers. Currently, VA employs about 1,850 physician assistants. Based on wages paid by private-sector providers, we estimate that the pay rate for those employees would increase by 6 percent in 2016 (from \$104,000 to \$110,000) if VA paid competitive rates.

In addition, we expect that the higher pay level would help ameliorate VA's current difficulties in recruiting and retaining physicians assistants, and would thus increase the total number of PAs employed by VA. Based on data from VA on hiring and retaining nurses, who are paid at competitive rates, CBO estimates that

under section 123 VA would employ roughly 2,000 physicians assistants by 2020 (or an 8 percent increase above the current staffing level). On that basis, CBO estimates that implementing this section would cost \$83 million over the 2016–2020 period.

*Pilot Program for Intermediate Care Technicians.* Effective 1 year after the date of enactment, section 113 would revive for 3 years an expired pilot program to hire 45 veterans who recently separated from medical positions in the military. Those personnel would serve as intermediate-care technicians and would supplement other technicians at VA facilities by performing duties such as removing sutures, taking vital signs, and administering medications under the supervision of a physician or nurse.

VA ran a similar program from January 2013 to February 2014. Based on information about that program, we estimate it would cost about \$60,000 annually for each veteran hired under the program authorized by this section. In addition, we expect that technicians hired under the pilot program would continue to be employed by VA after the program expired. Thus, implementing section 113 would cost of \$12 million over the 2017–2020 period, CBO estimates.

*Chiropractic Care.* Section 102 would require VA to provide chiropractic care at 42 VA Medical Centers (VAMCs) by 2017 and at 76 VAMCs by 2018. VA currently has about 60 full-time chiropractors practicing at 59 VAMCs. Based on that level of service CBO estimates that VA would require 17 additional chiropractors beginning in 2018.

Based on the average cost of employing chiropractors at VA (about \$145,000 in 2015) and adjusting for inflation, CBO estimates that implementing section 102 would increase costs by \$9 million over the 2018–2020 period.

*Training for Mental Health Professionals.* Section 121 would require VA to provide education and training to licensed mental health professionals and marriage counselors employed by the agency. VA regularly provides training and education to health care personnel (primarily physicians, dentists, and nurse practitioners).

VA currently employs about 300 licensed mental health professionals and marriage counselors. Some VA medical facilities currently offer, or plan to offer, annual training opportunities to those employees. Based on information from VA, we estimate that under this provision about 70 percent of its licensed mental health professionals and marriage counselors—about 200 employees in 2016—would need to be trained at an annual cost of \$7,500 per person. On that basis, and adjusting for inflation and gradual implementation, CBO estimates implementing this section would cost \$8 million over the 2016–2020 period.

*Prosthetic and Orthotic Care.* Section 111 would authorize the appropriation of \$5 million in 2017 to establish programs of education leading to advanced degrees in prosthetics and orthotics. Under this section, CBO expects that VA would work with medical schools to help expand higher education programs in those areas. CBO estimates that implementing section 111 would cost \$5 million over the 2017–2020 period.

*Data Sharing.* Section 112 would require VA to post on its website information and data about research being conducted by

the department, as well as final, peer-reviewed manuscripts using such data. Section 112 would further require both VA and the Department of Defense (DOD) to share data between the two departments to facilitate research on various topics relating to veterans, members of the Armed Forces, and their families. Those requirements would take effect 1 year after the date of enactment of S. 1203. Based on information from VA about the cost of creating and managing content on its website, CBO estimates that implementing section 112 would cost about \$4 million over the 2017–2020 period.

*Reports.* The bill would require VA, DOD, and the Department of Labor to produce a total of 21 reports on matters such as medical care, educational levels, benefit claims, and job training. CBO estimates that preparing those reports would cost a total of \$3 million over the 2016–2020 period.

#### *Direct spending*

S. 1203 contains provisions that would modify education benefits for veterans. CBO estimates that those provisions would decrease net direct spending by \$60 million over the 2016–2025 period (see Table 2).

Table 2.—Estimated Effects of S. 1203 on Direct Spending

	By fiscal year, in millions of dollars—													
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016– 2020	2016– 2025		
CHANGES IN DIRECT SPENDING														
Payments for Reports														
Estimated Budget Authority .....	-6	-6	-6	-6	-6	-6	-6	-6	-6	-6	-30	-60		
Estimated Outlays .....	-6	-6	-6	-6	-6	-6	-6	-6	-6	-6	-30	-60		
Restoration of Benefits														
Estimated Budget Authority .....	*	*	*	*	*	*	*	*	*	*	*	*		
Estimated Outlays .....	*	*	*	*	*	*	*	*	*	*	*	*		
Total Changes in Direct Spending														
Estimated Budget Authority .....	-6	-6	-6	-6	-6	-6	-6	-6	-6	-6	-30	-60		
Estimated Outlays .....	-6	-6	-6	-6	-6	-6	-6	-6	-6	-6	-30	-60		

Note: \* = between \$0 and \$500,000.

*Payments for Reports.* Section 703 would temporarily reduce the fee that VA pays educational institutions to report certain information on enrollees who are using VA education benefits at those institutions. The annual amount VA pays per enrollee would decline by \$5 (from \$12 to \$7) for 10 years beginning on September 26, 2015. (In a small number of cases, VA pays a \$15 fee, which would be reduced to \$11.) About 1.2 million people use veterans’ education benefits each year and the costs of those benefits—including the reporting fees—are paid from mandatory appropriations. Thus, cutting the fee would reduce direct spending by about \$6 million annually and \$60 million over the 2016–2025 period, CBO estimates.

*Restoration of Benefits.* Section 301 would expand VA’s authority to restore educational benefits for servicemembers in the Reserve component who are called to active duty. Reservists would be eligible for this adjustment if they had to discontinue a course of education upon being ordered to active duty under the following circumstances:

- To assist a state in response to a major disaster or emergency;
- or
- To augment the active component in support of a preplanned mission for the combatant commands.

Under current law, VA can restore education benefits for military personnel deployed for several other reasons. Further, most service-members are notified more than 180 days in advance of a deployment, giving them sufficient time to complete a course or make other arrangements with the education institution. Based on information from DOD, CBO estimates that about 200 reservists would be unable to complete coursework in any year for the reasons listed above. However, most of those personnel would not exhaust all of their education benefits, so restoring lost benefits would not result in additional spending on their behalf. Approximately 50 reservists who would use all of their benefits would have about \$600 each in lost benefits restored under section 301. Thus, the additional costs for those whose benefits would increase direct spending by less than \$500,000 over the 2016–2025 period, CBO estimates.

**Pay-As-You-Go Considerations:** The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in the following table.

CBO Estimate of Pay-As-You-Go Effects for S. 1203 as ordered reported by the Senate Committee on Veterans' Affairs on July 22, 2015

	By fiscal year, in millions of dollars—											
	2016	2017	2018	2019	2020	2021	2022	2023	2024	2025	2016–2020	2016–2025
NET INCREASE OR DECREASE (-) IN THE DEFICIT												
Statutory Pay-As-You-Go Impact .....	-6	-6	-6	-6	-6	-6	-6	-6	-6	-6	-30	-60

**Intergovernmental and private-sector impact:** S. 1203 contains no intergovernmental or private-sector mandates as defined in UMRA and would benefit public institutions of higher education that participate in educational programs under the GI Bill. Any costs those entities might incur, including reductions in fee payments from the VA, would be incurred as conditions of participating in a voluntary federal program.

*Estimate prepared by:* Federal Costs: Ann E. Futrell, David Newman, and Dwayne M. Wright; Impact on State, Local, and Tribal Governments: Jon Sperl; Impact on the Private Sector: Paige Piper/Bach.

*Estimate approved by:* H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

#### REGULATORY IMPACT STATEMENT

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee on Veterans' Affairs has made an evaluation of the regulatory impact that would be incurred in carrying out the Committee bill. The Committee finds that the Committee bill would not entail any regulation of individuals or businesses or result in any impact on the personal privacy of any

individuals and that the paperwork resulting from enactment would be minimal.

#### TABULATION OF VOTES CAST IN COMMITTEE

In compliance with paragraph 7(b) of rule XXVI of the Standing Rules of the Senate, the following is a tabulation of votes cast in person or by proxy by members of the Committee on Veterans' Affairs at its July 22, 2015, meeting. Five amendments to S. 1203 were voted on by Members of the Committee.

An amendment by Senator Murray would have required VA to provide child care assistance to certain veterans receiving health care from VA. This amendment was not agreed to by a roll call vote.

Yeas	Senator	Nays
	Mr. Moran	X
	Mr. Boozman	X
	Mr. Heller	X
	Mr. Cassidy	X
	Mr. Rounds	X
	Mr. Tillis	X
	Mr. Sullivan	X
X	Mr. Blumenthal	
X	Mrs. Murray	
X	Mr. Sanders	
X (by proxy)	Mr. Brown	
X	Mr. Tester	
X	Ms. Hirono	
X	Mr. Manchin	
	Mr. Isakson, Chairman	X
7	TALLY	8

An amendment by Senator Murray would have required VA to improve the women veterans contact center. This amendment was not agreed to by a roll call vote.

Yeas	Senator	Nays
	Mr. Moran	X
	Mr. Boozman	X
	Mr. Heller	X
	Mr. Cassidy	X
	Mr. Rounds	X
	Mr. Tillis	X
	Mr. Sullivan	X
X	Mr. Blumenthal	
X	Mrs. Murray	
X	Mr. Sanders	
X (by proxy)	Mr. Brown	
X	Mr. Tester	
X	Ms. Hirono	
X	Mr. Manchin	
	Mr. Isakson, Chairman	X
7	TALLY	8

An amendment by Senator Murray would require VA to provide treatment for certain emergency medical conditions and women in labor. This amendment was agreed to by voice vote.

An amendment by Senator Tester would require VA to submit to Congress a report on VA's medical workforce. This amendment was agreed to by voice vote.

An amendment by Senator Tester would address the training, compensation, and qualifications for certain health care providers at VA. This amendment was agreed to by voice vote.

The Committee also discussed amendments sponsored by Senators Blumenthal, Murray, Sanders, Tester, and Hirono but did not vote on those amendments because they were withdrawn.

S. 1203 as amended, and as subsequently amended during the Committee meeting, was agreed to by voice vote and ordered favorably reported to the Senate.

#### AGENCY REPORT

On May 13, 2015, David R. McLenachen, Acting Deputy Under Secretary for Disability Assistance; on June 3, 2015, Thomas Lynch, Assistant Deputy Under Secretary for Health Clinical Operations, Veterans Health Administration; and on June 24, 2015, Dr. Rajiv Jain, Assistant Deputy Under Secretary for Health for Patient Care Services, Veterans Health Administration from the Department of Veterans Affairs appeared before the Committee on Veterans' Affairs and submitted testimony on various bills incorporated into the Committee bill. In addition, on July 15, 2015, and September 4, 2015, VA provided views on various bills incorporated into the Committee bill. Excerpts from these statements are reprinted below:



STATEMENT OF DAVID R. McLENACHEN, ACTING DEPUTY  
UNDER SECRETARY FOR DISABILITY ASSISTANCE, VET-  
ERANS BENEFITS ADMINISTRATION, U.S. DEPARTMENT  
OF VETERANS AFFAIRS

Good afternoon, Mr. Chairman and Members of the Committee. I am pleased to be here today to provide the views of the Department of Veterans Affairs (VA) on pending legislation affecting VA's programs, including the following: S. 270, S. 602, S. 627, the "21st Century Veterans Benefits Delivery Act," the "Veterans' Compensation Cost-of-Living Adjustment Act of 2015," and a draft bill concerning VA small business contracting, Veterans benefits, and burial matters. We will separately provide views on the following bills: S. 681; sections 202, 203 and 206 of the "21st Century Veterans Benefits Delivery Act;" the bill associated with legislative proposals from the Report of the Military Compensation and Retirement Modernization Commission; the bill associated with legislative proposals from the Department of Defense (DOD); and sections 201 and 206 of the consolidated bill related to bills from the 113th Congress. Accompanying me this afternoon is Renée Szybala, Assistant General Counsel.

\* \* \* \* \*

S. 1203

*Section 101*

Section 101 would amend section 1144 of title 10, United States Code, by adding a subsection (f) to require modifications to the eBenefits Internet Web site to ensure that members of the Armed Forces and spouses have access to the online curriculum for the Transition Assistance Program (TAP), as administered by the Secretary of Labor, the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs. This would require modifications to the eBenefits Web site to host the online version of the TAP curriculum.

Section 101 would also note Congress' intent that the Secretary of Labor, the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs collaborate to establish a process by which Veterans service organizations may be present for TAP to provide assistance relating to submitting claims for VA compensation and pension benefits. The Secretary of Defense would be required to submit a report to Congress, no later than 1 year after enactment, on Veterans service organizations' participation.

VA does not support the provision to make TAP curriculum available through eBenefits because it is unnecessary. This provision would be duplicative as all TAP curriculums are already available through the Joint Knowledge Online (JKO) system, which is

linked to eBenefits. VA modified the eBenefits portal in fiscal year 2014 to provide an online version of VA's section of the TAP curriculum through the JKO link and facilitate online participation for transitioning Servicemembers and their families. This functionality lends support to geographically dispersed Servicemembers as well as members of the National Guard and Reserve components who are required to participate in VA's section of TAP. Additionally, the online version is beneficial to Veterans and their families if they would like to access the curriculum after separation.

VA defers to DOD and the Department of Homeland Security for comment on proposed new 10 U.S.C. § 1144(f)(2) regarding the feasibility of ensuring that Servicemembers who are mandated to fulfill the TAP requirement can satisfy the requirement through means other than solely through an Internet Web site.

VA does not oppose having a process for Veterans service organizations (VSOs) to provide assistance relating to submittal of claims for VA compensation and pension benefits. VA currently provides an overview of the services offered by VSOs and introduces VSOs to Servicemembers during our benefits briefings. VA also partners with VSOs at military installations where they are co-located or available to offer claims support.

VA defers to DOD on subsection (b)(2) of section 101 of the bill regarding the requirement to provide a report on participation of VSOs in TAP.

VA estimates that no administrative or benefit costs to VA would be associated with enactment of this section.

#### *Section 102*

Section 102 would amend 38 U.S.C. § 5104, which provides requirements for VA's decisions and notices of decision. It would require VA, upon issuing a decision for a claimed benefit, to also explain the procedure for obtaining review of the decision and explain the benefits of filing a Notice of Disagreement (NOD) within 180 days.

VA does not support this section. While VA appreciates the effort to encourage individuals to file their NOD in a timelier manner, VA would prefer a more definitive legislative solution.

As noted in VA's Strategic Plan to Transform the Appeal Process, which was provided to the Senate Committee on Veterans' Affairs on February 26, 2014, the current process provides appellants with multiple reviews in the Veterans Benefits Administration (VBA) and one or more reviews at the Board of Veterans' Appeals (Board), depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. The multi-step, open-record appeal process set out in current law precludes the efficient delivery of benefits to all Veterans. The longer an appeal takes, the more likely it is that a claimed disability will change, resulting in the need for additional medical and other evidence and further processing delays. As a result, the length of the process is driven by how many cycles and readjudications are triggered. VA's FY 2016 budget request includes legislative proposals to improve the appeal process, and VA has collaborated with Veterans service organizations to develop an optional fully developed appeals pilot program. VA continues to work with

Congress and other stakeholders to explore long-term solutions that would provide Veterans the timely appeals process they deserve.

VA estimates that GOE costs associated with this section would be insignificant.

### *Section 103*

Section 103 would allow for greater use of video conference hearings by the Board, while still providing Veterans with the opportunity to request an in-person hearing if they so elect. This provision would apply to cases received by the Board pursuant to Notices of Disagreement submitted on or after the date of the enactment of the Act. VA fully supports section 103 as drafted, as this provision would potentially decrease hearing wait times for Veterans, enhance efficiency within VA, and better focus Board resources toward issuing more final decisions.

The Board has historically been able to schedule video conference hearings more quickly than in-person hearings, saving valuable time in the appeals process for Veterans who elect this type of hearing. In FY 2014, on average, video conference hearings were held 124 days sooner than in-person hearings before a Veterans Law Judge (VLJ) at a Regional Office Travel Board hearing. Section 103 would allow both the Board and Veterans to capitalize on these time savings by giving the Board greater flexibility to schedule video conference hearings than is possible under the current statutory scheme.

Historical data also shows that there is no statistical difference in the ultimate disposition of appeals based on the type of hearing selected. Veterans who had video conference hearings had an allowance rate for their appeals that was virtually the same as Veterans who had in-person hearings; however, Veterans who had video conference hearings were able to have their hearings scheduled much more quickly. Section 103 would continue to allow Veterans who want an in-person hearing the opportunity to specifically request and receive one.

Enactment of section 103 could also lead to an increase in the number of final decisions for Veterans as a result of increased productivity at the Board. Time lost due to travel and time lost in the field due to appellants failing to show up for their hearing would be greatly reduced, allowing VLJs to better focus their time and resources on issuing final Board decisions for Veterans.

Major technological upgrades to the Board's video conference hearing equipment over the past several years leave the Board well-positioned for the enactment of section 103. This includes the purchase of high-definition video equipment, a state-of-the-art digital audio recording system, implementation of a virtual hearing docket, and significantly increased video conference hearing capacity. Section 103 would allow the Board to better leverage these important technological enhancements.

We observe that section 103 would redesignate current subsection (f) of section 7107 of title 38, United States Code, as subsection (g); however, the draft legislation does not revise the reference to current subsection (f) in subsection (a) of section 7107 of title 38, United States Code. We suggest revising subsection (a)(1)

to state: "Except as provided in paragraphs (2) and (3) and in subsection (g), each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket."

In short, section 103 would result in shorter hearing wait times, focusing Board resources on issuing more decisions, and providing maximum flexibility for both Veterans and VA, while fully utilizing recent technological improvements. VA therefore strongly endorses this proposal.

#### *Section 201*

We defer to the U.S. Government Accountability Office.

#### *Section 204*

We defer to the VA Office of the Inspector General.

#### *Section 205*

Section 205 would require VA to submit an annual report to Congress on the capacity of VBA to process claims during the next 1-year period. The reports would include the number of claims VBA expects to process; number of full-time equivalent (FTE) employees who are dedicated to processing such claims; an estimate of the number of claims a single FTE can process in a year; an assessment of whether VA requires additional or fewer FTE to process such claims during the next 1-year, 5-year, and 10-year periods; a description of actions VA will take to improve claims processing; and an assessment of actions identified in previous reports required by this section. VA would be required to make the report publicly available on the Internet.

VA believes this legislation is unnecessary as VA's current budget reports address these issues adequately, and such budget reports are available publicly.

No administrative costs would be associated with enactment of this section.

#### *Section 207*

Section 207 would require VA to submit to Congress a report on the Department's progress in implementing the Veterans Benefits Management System (VBMS). The report would include (1) an assessment of current VBMS functionality; (2) recommendations from VA's claims processors, including Veterans Service Representatives, Rating Veterans Service Representatives, and Decision Review Officers, on legislative or administrative actions to improve the claims process; and (3) recommendations from VSOs that use VBMS on legislative or administrative actions to improve VBMS. VA would be required to submit a report within 180 days after enactment of the bill and no less frequently than once every 180 days thereafter until 3 years after enactment.

VA believes this legislation unnecessary as VA currently provides regular updates to Congress regarding implementation and functionality of VBMS; quarterly briefings to the House and Senate Committees on Veterans' Affairs, advising them of the status of VBA operations and updates to VBMS; and a quarterly report to the House and Senate Appropriations Committees summarizing re-

cent and upcoming changes to VBMS. Additional reporting requirements are not needed at this time.

VA estimates GOE costs associated with this section would be insignificant.

#### *Section 208*

Section 208 would require VA to submit, within 90 days of enactment of this Act, a report to Congress detailing plans to reduce the inventory of claims for dependency and indemnity compensation (DIC) and pension benefits.

VA does not support section 208. It is unnecessary as VBA continues to make significant improvements in processing DIC and pension claims.

VA's Pension and Fiduciary (P&F) Service, which oversees administration of the DIC and pension programs, reviewed the policies and procedures applicable to the adjudication of these claims to identify obstacles to timely processing. P&F Service determined that certain claim processing steps are redundant and appropriate for elimination. On March 22, 2013, P&F Service issued Fast Letter 13-04 (FL 13-04), Simplified Processing of Dependency and Indemnity Compensation (DIC) Claims, which instructs VBA field staff on the procedures to follow when processing DIC claims. P&F Service is working on similar guidance for pension claims.

On July 7, 2014, VA began automating payment of DIC to certain surviving spouses of Veterans rated totally disabled at death. As part of VA's notice of death process, VA systems determine if the deceased Veteran met the requirements of section 1318 and if the surviving spouse met the relationship requirements. If the system determines that both requirements are met it will automatically process and award DIC under section 1318 within 6 days of notification of the Veteran's death.

Based on these changes and an aggressive workload management plan in VA's Pension Management Centers, VA has reduced its pending DIC claim inventory by 55 percent from its peak of 19,100 claims to 8,600 claims, and backlog by 87 percent from its peak of 8,800 to 1,000. Veterans pension inventory was reduced by 68 percent from its peak of 36,100 to 11,400, and backlog by 96 percent from its peak of 14,500 to 600. Average processing time for DIC has improved by 100 days from its peak of 168 days to 68 days, while maintaining 99 percent accuracy.

No benefits or GOE costs would be associated with enactment of this section.

#### *Section 209*

This section would require VA to include in its Monday Morning Workload Report (MMWR) the number of claims received by regional offices and pending decisions, disaggregated by the number of claims that have been pending for more than 125 days; the number of claims that have been pending for 125 days or less; and the number of claims that do not require a decision concerning a disability rating. This section would also require VA to include in the MMWR, the sections entitled "Transformation" and "Aggregate," the number of partial ratings assigned. Additionally, this section would require VA to include in the MMWR a report on the total

number of fully developed claims (FDC) received by regional offices that are pending a decision and the subset of those claims that have been pending for more than 125 days, disaggregated by station.

VA does not support this section. The information required by section 209(a) is already published in the MMWR for rating-related disability compensation and pension claims. The section appears to propose requiring all other non-rating pending compensation and pension workload be added to the MMWR; however information about these pending claims is also already published in the MMWR. The single distinguishing new feature would be the application of the backlog metric of 125 days to all non-rating-related claims by regional office. However, 125 days is not a useful metric for the majority of non-rating-related claims. The significant differences in the work effort required for various types of non-rating-related claims and the fact that much of this work is consolidated to the Pension Management Centers make comparison at the aggregate level across all regional offices a comparison without context or any real capability to inform how one regional office compares to another.

Section 209(b) would elevate tallies of partial ratings of various claim types into a tool of comparison between regional offices. Data on partial ratings that award benefits for some, but not all, claimed conditions are not informative in this way as they reflect the unique circumstances of each claim. Additionally, irrespective of partial rating decisions, over half of the Veterans with pending claims are already receiving compensation as a result of a previously filed claim. Adding this partial-rating metric would not provide meaningful comparisons at the regional office level.

Section 209(c) would require pending FDC claims, one VBA high-priority claims category, to be added to the MMWR. To the degree making comparisons between regional offices is desired, the existing reporting in the MMWR on claims older than 125 days, VA's largest pending group of high priority claims, provides a better metric for such comparisons than FDC claims. However, should it be determined that a pending FDC metric would be useful, legislation is not required to add this metric to the MMWR.

VA estimates GOE costs associated with this section would be insignificant.

#### *Section 210*

This section would require VA to make available to the public on the Internet the "Appeals Pending" and "Appeals Workload by Station" reports. VA would be required to include in one of these reports the percentage of appeals granted by station and the percentage of claims previously adjudicated by VBA's Appeals Management Center that were subsequently granted or remanded by the Board.

VA does not support this section. VBA's MMWR currently includes the total number of appeals pending and other metrics related to appeals. Before adding data elements to reports, VBA needs to ensure that the information is provided in a useful way that can be easily understood by the public.

For example, VBA is changing its workload management strategy by developing the National Work Queue (NWQ), a paperless workload management initiative designed to improve VBA's overall production capacity. In the initial phase of NWQ, VBA is matching its inventory with claims processing capacity at the regional office-level, moving claims electronically from a centralized queue to an office identified as having capacity to complete the work. With this national workload approach, VA will continue to focus on the improvement of its traditional performance metrics, with an emphasis on improving quality and consistency of claims and appeals processing nationwide to ensure Veterans and their families receive timely benefits, regardless of where they reside. Appeals data by station will be less useful to the public as NWQ is implemented.

Additionally, it is unclear how the bill would define "appeals granted by station." Multiple decisions may be appealed in each claim, and it is unclear if VA would be required to report percentages associated with each decision or each appeal. Similarly, it is unclear at what point in the appeal process this metric would be reported. The current process provides appellants with multiple reviews in VBA and one or more reviews at the Board, depending upon the submission of new evidence or whether the Board determines that it is necessary to remand the matter to VBA. The longer an appeal takes, the more likely it is that a claimed disability will change, resulting in the need for additional evidence, further processing delays, and less clarity in whether an initial decision was correctly made.

VA estimates GOE costs associated with this section would be insignificant.

#### *Section 211*

Section 211 would revise provisions of the Veterans' Benefits Improvement Act of 1996 relating to contract examinations to clarify that, notwithstanding any law regarding the licensure of physicians, a licensed physician may conduct disability examinations for VA in any state, the District of Columbia, or a commonwealth, territory, or possession of the United States, provided the examination is within the scope of the physician's authorized duties under a contract with VA.

VA supports the provision regarding licensure requirements as a means to ensure the quality of contract examinations. The demand for medical disability examinations has increased, largely due to an increase in the complexity of disability claims, an increase in the number of disabilities that Veterans claim, and changes in eligibility requirements for disability benefits. This authority would help provide flexibility in examinations through non-VA medical providers while maintaining licensure standards and accelerating benefits delivery.

No benefit or discretionary costs would be associated with enactment of this section.

#### *Section 301*

Section 301 would require the appointment of at least one liaison between VA and DOD, and between VA and each of the Reserve components. It would also require the National Archives and

Records Administration (NARA) to appoint a liaison to VA. The intent of these appointments is to expedite the provision of information needed to process claims by VA, to ensure that such information would be provided within 30 days of the request. VA would be required to submit a report to Congress annually regarding the timeliness of responses from DOD and NARA.

While VA appreciates the intent to facilitate records retrieval, VA believes that this section of the bill is unnecessary because of the extensive ongoing efforts between VA and other Federal agencies to improve response times to VA requests for records that are required to adjudicate disability claims. For example, a memorandum of understanding (MOU) between VA and DOD provides VA, at time of discharge, certified and complete service treatment records in an electronic, searchable format. As this MOU applies to the 300,000 annually separated Active Duty, National Guard, and Reserve Component members, it will significantly contribute to VA's efforts to achieve its 125-day goal for completion of disability compensation claims.

Costs associated with enactment of this section would be insignificant. DOD and NARA would be required to appoint liaisons; VBA would not hire additional employees. Costs associated with the report required by section 301(d) would be insignificant.

#### *Section 302*

Section 302 would require DOD and VA to jointly submit to Congress a report that sets forth a timeline with milestones for achieving interoperability between the electronic health records systems of both Departments.

The Veterans Health Administration (VHA) runs the largest integrated health care system in the country; delivering the quality care Veterans deserve is not possible without innovative information technology and data sharing. VA's Electronic Health Record (EHR)—Veterans Health Information Systems and Technology Architecture (VistA)—is the most widely used EHR in the United States, and VA is working rapidly to modernize it. VA is developing a new web application and services platform called the Enterprise Health Management Platform (eHMP). eHMP is the VistA application clinicians will use during their clinical interactions with Veterans. eHMP brings exciting new features to the clinician, including Google-like search capabilities and information buttons that help clinicians find needed information much faster than current systems. VA is already piloting eHMP, and expects to deploy it to 30 sites by the end of the calendar year, with full rollout—including regular updates—over the next 3 years.

VA continues to work with DOD on health data interoperability, but it is important to note that the two Departments already share health care data on millions of Servicemembers and Veterans. In fact, the two Departments share more health data than any other health care entities in the nation. In addition to sharing health care data, VA and DOD have also paved the way for standardizing health care data, so that regardless of what system a clinician uses, the data is available in the right place and in the right way; for example, Tylenol and acetaminophen appear in the same place in the record because the system understands, through our data



standardization, that they are the same medication. Today, VA and DOD clinicians can use the Joint Legacy Viewer (JLV) to see VA and DOD data on a single screen in a Servicemember or Veteran's record. Eventually, eHMP will replace JLV and will allow clinicians to see VA, DOD, and third-party provider data in their regular clinical care tool.

The Department does not object to providing a report. Costs of this report would be insignificant as the Department currently provides a similar report to Congress.

\* \* \* \* \*

DRAFT TO AMEND TITLE 38, UNITED STATES CODE, TO MODIFY THE TREATMENT UNDER CONTRACTING GOALS AND PREFERENCES OF THE DEPARTMENT OF VETERANS AFFAIRS FOR SMALL BUSINESSES OWNED BY VETERANS, TO CARRY OUT A PILOT PROGRAM ON THE TREATMENT OF CERTAIN APPLICATIONS FOR DEPENDENCY AND INDEMNITY COMPENSATION AS FULLY DEVELOPED CLAIMS, AND FOR OTHER PURPOSES

#### *Section 101*

Section 101 would expand the flexibility provided to a service-disabled Veteran-owned small business (SDVOSB) to continue to hold that socioeconomic status upon the death of the service-disabled Veteran owner. Current law provides a transition period for SDVOSBs for up to 10 years after the Veteran's death, if the Veteran had a service-connected disability with a 100-percent rating or died as a result of a service-connected disability. This bill would create a similar transition period for 3 years, if the Veteran had a service-connected disability with a rating of less than 100 percent and did not die as a result of a service-connected disability.

VA supports this provision because, without the proposed transition period, the death of the Veteran owner could put at risk the jobs and livelihoods of the firm's employees, as well as the surviving spouse. The transition period provides the spouse a reasonable period of time to determine what should be done with the business after the Veteran's death.

VA anticipates enactment of this provision would entail minor administrative costs. VA would incorporate this change into its existing application processes with no material addition to costs.

#### *Section 102*

Section 102 would amend 38 U.S.C. § 8127 by providing a transition rule for a member of the Armed Forces who owns at least 51 percent of a small business and is killed in the line of duty. Such a Veteran's surviving spouse who acquires ownership interest in the small business would be treated as a service disabled Veteran owner until the earliest of the following: 10 years after the Servicemember's death; the date on which the surviving spouse remarries; or the date on which the spouse no longer owns at least 51 percent of the small business. Such a Veteran's dependent child that acquires ownership interest in the small business would be treated as a Veteran owner for 10 years after the Servicemember's death or the date on which the child no longer owns at least 51 percent of the small business, whichever occurs first.

VA supports the spirit behind this provision but notes two substantive concerns with the draft language. First, Congress sought to ensure that Veteran small business owners genuinely own and control the small business receiving benefits under the Veterans First Contracting Program. This would be a challenge for members of the regular Armed Forces, especially those serving in active duty abroad. Moreover, members of the Armed Forces are also Federal employees, which places limits on their ability to receive Federal contracts under conflict of interest rules. In practice, this rule would mainly apply to members of the National Guard and Army Reserve who own small businesses in their civilian lives, become activated, and are killed in the line of duty, leaving survivors to assume operational control of the firm as a service disabled Veteran-owned small business. Second, if a dependent child owner is still a minor, this may complicate the actual operation of this rule because of limitations on a minor's capacity to enter into binding contracts or engage in commercial transactions as an owner. The firm may need to reside in a trust for the benefit of the dependent minor child with an adult trustee controlling the firm until the dependent reaches adulthood. VA would be pleased to provide technical assistance to seek resolution of these issues.

VA anticipates enactment of this provision would entail minor administrative costs. VA would incorporate this change into its existing application processes with no material addition to costs.

#### *Section 202*

Section 202 would require VA to submit a report on the standard of proof for service-connected disability compensation for military sexual trauma (MST)-based mental health conditions to the House and Senate Committees on Veterans' Affairs no later than 90 days after enactment. The report would include recommendations for an appropriate standard of proof and legislative actions, if necessary.

VA believes this legislation is unnecessary as VA provided a report with this information to the House and Senate Appropriations Committees in March 2015 and can share it with other interested Congressional offices.

No benefit or GOE costs would be associated with enactment of this section.

#### *Section 203*

Section 203 would require VA to submit a report with data on compensation claims for MST-based PTSD to Congress no later than December 1, 2016 and each year thereafter through 2020. The report would include the following information from the preceding fiscal year:

1. The number of MST-related PTSD claims submitted;
2. The number and percentage of claims submitted by gender;
3. The number of approved claims, including number and percentage by gender;
4. The number of denied claims, including number and percentage by gender;
5. The number of claims assigned to each rating percentage, including number and percentage by gender;

6. The three most common reasons given for denial of such claims under 38 U.S.C. § 5104(b)(1);

7. The number of denials that were based on the failure of the Veteran to report for a medical examination;

8. The number of MST-based PTSD claims resubmitted after denial in a previous adjudication and items 2–7 from this list for this subset of claims;

9. The number of claims that were pending at the end of the fiscal year and separately the number of such claims on appeal; and

10. The average number of days to complete MST-based PTSD claims.

VA believes this legislation is unnecessary as VA provided a report with most of this information to the House and Senate Appropriations Committees in March 2015 and can share it with other interested Congressional offices. If additional information or data for subsequent years are needed, VA can provide this to interested Congressional offices without legislation.

No benefit or GOE costs would be associated with enactment of this section.

#### *Section 204*

Section 204 would direct VA to establish a 1-year pilot program within 90 days of enactment to assess the feasibility and advisability of expediting the treatment of certain DIC claims, to include claims submitted:

1. Within 1 year of the death of the Veteran upon whose service the claim is based;

2. By dependents of Veterans who received benefits for one or more service-connected conditions as of the date of death;

3. With evidence indicating the Veteran's death was due to a service-connected or compensable disability; and

4. By a spouse of a deceased Veteran who certifies that he or she has not remarried since the Veteran's death.

Section 204 would also require VA to submit a report to the House and Senate Committees on Veterans' Affairs within 270 days of completing the pilot program. The report would include:

1. The number of DIC claims adjudicated under the pilot disaggregated by claims received by a spouse, child, or parent of a deceased Veteran;

2. The number of DIC claims adjudicated but for which benefits were not awarded under the pilot disaggregated by claims received by a spouse, child, or parent of a deceased Veteran;

3. A comparison of accuracy and timeliness of claims adjudicated under the pilot and DIC claims not adjudicated under the pilot;

4. VA's finding with respect to the pilot; and

5. Recommendations the VA may have for legislative or administrative action to improve processing of DIC claims.

VA supports the intent of this legislation, but believes it is unnecessary. As discussed above, in fiscal year 2013, VBA's P&F Service reviewed the policies and procedures applicable to the adjudication of DIC claims to identify obstacles to timely processing. P&F Service determined that VA could quickly grant many DIC claims with little or no additional development, and that certain

claim processing steps are redundant and appropriate for elimination. On March 22, 2013, P&F Service issued Fast Letter 13-04 (FL 13-04), Simplified Processing of Dependency and Indemnity Compensation (DIC) Claims, which instructs VBA field staff on the procedures to follow when processing claims.

The new procedures require screening of claims at the intake point and limited or no development of additional evidence when information in VBA systems supports granting benefits. It also clarifies that VA grants DIC under 38 U.S.C. § 1318 based upon total service-connected disability for a prescribed period before death in the same manner as if the death were service connected. Accordingly, in these cases, our field staff will grant service-connected burial benefits and presume the permanence of total disability for purposes of establishing the survivor's entitlement to VA education and health care benefits. These new procedures allowed us to grant DIC benefits faster and without unnecessary development.

Also, as discussed above, on July 7, 2014, VA automated some benefits to surviving spouses. VA can now automatically pay certain surviving spouses under section 1318. As part of VA's notice of death process, VA systems determine if the deceased Veteran met the requirements of section 1318 and if the surviving spouse met the relationship requirements. If the system determines that both requirements are met, it will automatically process and award DIC under section 1318 within 6 days of notification of the Veteran's death.

Based on these changes and aggressive workload management plan in VA's Pension Management Centers, VA has reduced its pending DIC claim inventory by 55 percent from its peak of 19,100 claims to 8,600 claims. Average processing time for these claims has improved by 100 days from its peak of 168 days to 68 days while maintaining 99 percent accuracy.

VA estimates no benefit or GOE costs would be associated with enactment of this section.

#### *Section 205*

Section 205 would require VA, DOD, and military historians recommended by DOD to review the process used to determine if individuals who applied for Filipino Veterans Equity Compensation (FVEC) benefits served during World War II in accordance with the requirements to receive this benefit payment. Section 205 would also require VA to submit a report to the House and Senate Committees on Veterans' Affairs no later than 90 days after enactment. The report would detail any findings, actions taken, or recommendations for legislative action with respect to the review. If a new process is established as a result of this review, the process shall include mechanisms to ensure individuals who receive payments did not engage in any disqualifying conduct during their service, including collaboration with the enemy or criminal conduct.

VA does not support this section. In determining whether a claimant is eligible for a VA benefit, including FVEC, VA is legally bound by service department determinations as to what service a claimant performed. VA regulations provide two methods for establishing service. Under 38 C.F.R. § 3.203(a), VA may accept evidence

submitted by a claimant if the evidence is a document issued by a U.S. service department; contains the needed information as to length, time, and character of service; and, in VA's opinion, is genuine and accurate. Otherwise, under 38 C.F.R. § 3.203(c), VA must seek verification of service from the appropriate service department. These regulations are applicable to all claimants. For claims based on Philippine Service in World War II, the U.S. Army is the relevant service department, but VA requests verification from the National Personnel Records Center which, since 1998, has acted as the custodian of the U.S. Army's collection of Philippine Army and Guerrilla records.

No benefit or GOE costs would be associated with enactment of this section.

### *Section 301*

Section 301 would require VA to conduct a study and report to Congress on matters relating to the interment of unclaimed remains of Veterans in national cemeteries under the control of the National Cemetery Administration (NCA), including: (1) determining the scope of issues relating to unclaimed remains of Veterans, to include an estimate of the number of unclaimed remains; (2) assessing the effectiveness of VA's procedures for working with persons or entities having custody of unclaimed remains to facilitate interment in national cemeteries; (3) assessing State and local laws that affect the Secretary's ability to inter such remains; and (4) recommending legislative or administrative action the VA considers appropriate.

Section 301 would provide flexibility for VA to review a subset of applicable entities in the estimating of the number of unclaimed remains of Veterans as well as assess a sampling of applicable State and local laws.

In December 2014, NCA published a Fact Sheet to provide the public with information on VA burial benefits for unclaimed remains of Veterans. NCA prepared the Fact Sheet in collaboration with representatives from NCA, VBA, and VHA. As well as being posted on VA's Web site, the Fact Sheet was widely distributed to targeted employees in VA, including Homeless Veteran Coordinators, Decedent Affairs personnel, VBA Regional Compensation Representatives, and NCA Cemetery Directors as well as shared in a GovDelivery message sent to over 28,000 funeral director and coroner's office recipients who are entities that may come to NCA seeking assistance to ensure burial of a Veteran whose remains are unclaimed.

NCA strongly supports the goal of ensuring all Veterans, including those whose remains are unclaimed and do not have sufficient resources, who earned the right to burial and memorialization in a national, State, or tribal Veterans cemetery are accorded that honor. NCA appreciates the continued Congressional support to meet the needs of Veterans whose remains are unclaimed. While NCA is remains concerned that the study may be unnecessary or premature at this time, we would appreciate working with the Committee to make sure any study that the Department is mandated to produce is targeting data that can be used to better serve these Veterans.

Over the past several years, Congressional and Departmental actions have increased the Department's ability to ensure dignified burials for the unclaimed remains of eligible Veterans. The Dignified Burial and Other Veterans' Benefits Improvement Act of 2012 (Public Law 112-260) authorizes VA to furnish benefits for the burial in a national cemetery for the unclaimed remains of a Veteran with no known next-of-kin and where sufficient financial resources are not available for this purpose. Those benefits include reimbursements for the cost of a casket or urn, for costs of transportation to the nearest national cemetery, and for certain funeral expenses.

NCA is pleased to report that our final rule was published on April 13, 2015, beginning today, we are able to accept requests for reimbursement for caskets or urns purchased for the interment of deceased Veterans who died on or after January 10, 2014, without next of kin, and where sufficient resources for burial are not available. As this new benefit is administered, NCA will have a new source for collecting data on the number of Veterans whose unclaimed remains are brought to NCA for interment. The data can be used to assist in targeting outreach efforts to partners and getting a fuller understanding of the issue.

The Department continues to identify areas to recommend legislative or administrative action that would support dignified burial of unclaimed remains of Veterans. Two legislative proposals are included in VA's FY 2016 Budget Submission. Currently, VA may furnish a reimbursement for the cost of a casket or urn and for the cost of transportation to the nearest national cemetery. These benefits are based on the Veteran being interred in a VA national cemetery. The legislative proposals are to expand these two benefits to include those Veterans who are interred in a state or tribal organization Veteran cemetery.

In conjunction with discussions we had last year with congressional staff, NCA reviewed its internal procedures and began to follow-up every thirty days with the public officials on any unclaimed remain cases shown as pending until the cases are scheduled for burial and the Veterans' remains are interred. While state and local laws designate who may act as an authorized representative to claim remains, NCA can work with any individual or entity that contacts us to determine a Veteran's eligibility for burial and scheduling the burial in a VA national cemetery.

The great work of the Missing in America Project (MIAP) and individual funeral directors is invaluable in complementing VA's role of ensuring that all Veterans, including those whose unclaimed remains are brought to us, receive the proper resources to ensure receipt of a dignified burial. Over the past several years, NCA has developed a strong working relationship with funeral homes, coroner offices, and medical examiners, to actively provide responses to requests for eligibility reviews. In FY 2014, NCA processed 2,805 MIAP requests to determine eligibility for burial in a VA national cemetery, of which 1,642 were verified as eligible.

In light of VA's recent activities, detailed above, to implement legislation targeted at ensuring appropriate burial of the unclaimed remains of Veterans, NCA feels it is premature to undertake the proposed study. Furthermore, if legislation is passed requiring the

study, we do not object to the proposed scope and content, we are concerned that the timeframe for reporting in the bill is unrealistic.

To implement the mandatory requirements outlined in the bill, even with the flexibilities included in the bill language, the Department would be required to contract with one or more private entities to perform such a study. Survey instruments would need to be developed to assess the number of remains in the possession of funeral directors and other entities for individuals with no known next of kin, and an appropriate sample would have to be identified and a legal review of state and local laws conducted regarding unclaimed remains of Veterans.

The bill provides a reporting timeframe of 1 year. The need to get formal clearances on survey instruments takes several months; therefore, a more realistic timeframe is 2 years.

The bill does not identify a funding source for this mandate. NCA is still evaluating the cost associated with this legislation.

#### *Section 401*

Section 401 would honor any person entitled under chapter 1223 of title 10, United States Code, to retired pay for nonregular service or who, but for age, would be entitled under this chapter to retired pay for nonregular service, as a Veteran. However, these individuals would not be entitled to any benefit by reason of this honor.

VA does not support this section. It would conflict with the definition of "Veteran" in 38 U.S.C. § 101(2) and would cause confusion about the definition of a Veteran and associated benefits. In title 38, United States Code, Veteran status is conditioned on the performance of "active military, naval, or air service." Under current law, a National Guard or Reserve member is considered to have had such service only if he or she served on active duty, was disabled or died during active duty for training from a disease or injury incurred or aggravated in line of duty, or was disabled or died during inactive duty training from an injury incurred or aggravated in line of duty or from an acute myocardial infarction, a cardiac arrest, or a cerebrovascular accident. Section 401 would eliminate these service requirements for National Guard or Reserve members who served in such a capacity for at least 20 years. Retirement status alone would make them eligible for Veteran status.

VA recognizes that the National Guard and Reserves have admirably served this country and in recent years have played an important role in our Nation's overseas conflicts. Nevertheless, VA does not support this bill because it represents a departure from active service as the foundation for Veteran status. This section would extend Veteran status to those who never performed active military, naval, or air service, the very circumstance which qualifies an individual as a Veteran. Thus, this section would equate longevity of reserve service with the active service long ago established as the hallmark for Veteran status.

VA estimates that there would be no additional benefit or administrative costs associated with this section of the bill if enacted.

This concludes my testimony. We appreciate the opportunity to present our views on these bills and look forward to working with the Committee.

STATEMENT OF THOMAS LYNCH, M.D., ASSISTANT DEPUTY  
UNDER SECRETARY FOR HEALTH CLINICAL OPERATIONS,  
VETERANS HEALTH ADMINISTRATION, U.S. DEPARTMENT  
OF VETERANS AFFAIRS

Good morning Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA benefits programs and services. Joining us today is Maureen McCarthy, M.D., VHA's Deputy Chief Patient Care Services Officer and Susan Blauert, Deputy Assistant General Counsel in VA's Office of General Counsel.

We do not yet have cleared views on sections 2 and 4 of S. 297, S. 471, the draft bill on Joint VA-DOD formulary for pain and psychiatric medications, and the draft bill Veterans Health Act of 2015. We will forward the views to the Committee as soon as they are available.

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S. 297, FRONTLINES TO LIFELINES ACT OF 2015

Section 3(a) of the Frontlines to Lifelines Act of 2015 would direct the Secretary of Defense to transfer to the Secretary of Veterans Affairs the credentialing data of a covered health care provider who has been hired by VA, upon receiving a request from VA for the Department of Defense's (DOD) credentialing data related to such health care provider.

Section 3(b) would define a "covered health care provider" as a health care provider who is or was employed by the Secretary of Defense, provides or provided health care related services as part of such employment, and was credentialed by the Secretary of Defense.

Section 3(c) would require the Secretaries of Veterans Affairs and Defense to establish policies and promulgate regulations as may be necessary to carry out this section.

Section 3(d) would define the term "credentialing" to mean the systematic process of screening and evaluating qualifications and other credentials, including licensure, required education, relevant training and experience, and current competence and health status.

Credentialing is required to ensure a health care provider has the necessary clinical competence, professional experience, health status, education, training and licensure to provide specified medical or other patient care services. VA understands the goals of section 3, and the sharing of credentialing data between departments would facilitate VA's credentialing process and the appointment of only qualified, covered health care providers to the VA facility's medical staff. However, as this provision places requirements upon DOD, consultation with DOD is necessary before VA can present a position on this provision.

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STATEMENT OF DR. RAJIV JAIN, ASSISTANT DEPUTY  
UNDER SECRETARY FOR HEALTH FOR PATIENT CARE  
SERVICES, VETERANS HEALTH ADMINISTRATION, U.S.  
DEPARTMENT OF VETERANS AFFAIRS

Good morning Chairman Isakson, Ranking Member Blumenthal, and Members of the Committee. Thank you for inviting us here today to present our views on several bills that would affect VA benefits programs and services. Joining us today is Catherine Mitrano, Deputy Assistant Secretary for Resolution Management, and Jennifer Gray, Staff Attorney in VA's Office of General Counsel.

We do not yet have cleared views on the Draft Biological Implant Tracking and Veteran Safety Act of 2015 or on S. 1117, the Ensuring Veteran Safety Through Accountability Act of 2015. Additionally, we do not have cleared views on sections 203, 205, 208, and 209(b) of S. 469, sections 3 through 8 of S. 1085, section 2 of the draft bill referred to on the agenda as "Discussion Draft" or sections 101–106, 204, 205, 403 and 501 of The Jason Simcakoski Memorial Opioid Safety Act. We will be glad to work with the Committee on prioritization of those views and cost estimates not included in our statement.

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DISCUSSION DRAFT

Section 1 of the Discussion Draft would require the Secretary of Veterans Affairs to work with institutions of higher learning to develop partnerships for the establishment or expansion of programs of advanced degrees in prosthetics and orthotics with a goal of improving and enhancing the availability of prosthetic and orthotic care for Veterans.

VA provides rehabilitation services to Veterans with a mix of providers, including physical medicine and rehabilitation physicians, physical therapists, occupational therapists, prosthetists and orthotists all of whom work with the Veteran to enable the best possible rehabilitation given the individual's needs. VA offers in-house orthotic and prosthetic services at 79 locations across VA. In addition, VA contracts with more than 600 vendors for specialized orthotic and prosthetic services. Through both in-house staffing and contractual arrangements, VA is able to provide state-of the art commercially available items ranging from advanced myoelectric prosthetic arms to specific custom fitted orthoses. Nationally, VA has approximately 312 orthotic and prosthetic staff.

With regard to training and development, VA offers one of the largest orthotic and prosthetic residency programs in the nation. In fiscal year 2015, VA's Office of Academic Affiliations allocated \$877,621 to support 20 orthotics and prosthetics residents at 10 Veterans Affairs Medical Centers. The training consists of a year-long post-masters residency, with an average salary of \$44,000 per trainee. In recent years, VA has expanded the number of training sites and the number of trainees, but expansion has been limited due to a lack of certified supervisors for the training programs.

While VA supports means to improve and enhance the ability to hire and retain prosthetists and orthotists, it cannot support the

proposed bill. Under the proposed bill, VA would be required to partner with colleges and universities for the establishment or expansion of programs of advanced degrees in prosthetics and orthotics. These programs, however, would not directly benefit VA or Veterans as the legislation does not require that the programs affiliate with VA or send their trainees to VA as part of a service obligation.

Tying the granting of funds to the establishment or expansion of programs of advanced degrees that would directly benefit VA and Veterans is one of the changes that VA recommends for this legislation. VA looks forward to working with the Committee to craft a bill that more directly enhances advanced degrees in prosthetics and orthotics while benefiting VA and Veterans.

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THE SECRETARY OF VETERANS AFFAIRS  
WASHINGTON

JUL 15 2015

The Honorable Johnny Isakson  
Chairman  
Committee on Veterans' Affairs  
United States Senate  
Washington, DC 20510

Dear Mr. Chairman:

The agenda for the Senate Committee on Veterans' Affairs' June 3, 2015, and June 24, 2015, legislative hearings included a number of bills that the Department of Veterans Affairs (VA) was unable to address in our testimony. We are aware of the Committee's interest in receiving our views and cost estimates for those bills.

With this letter, we are providing the following remaining views and cost estimates for the following bills from the June 3, 2015, legislative hearing: S. 471, the Women Veterans Access to Quality Care Act of 2015 and sections 4(b)-(c) and 5 of the draft Veterans Health Act of 2015.

We are also providing views and costs on the following bills from the June 24, 2015, legislative hearing: the Draft Biological Implant Tracking and Veteran Safety Act of 2015; on S. 1117, the Ensuring Veteran Safety through Accountability Act of 2015; sections 203, 205, 208, and 209(b) of S. 469, the Women Veterans and Families Health Services Act of 2015; sections 3 through 8 of S. 1085, the Military and Veteran Caregiver Services Improvement Act of 2015; section 2 of the draft bill referred to on the agenda as "Discussion Draft"; and sections 101-106, 204, 205, 403, and 501 of the draft Jason Simcakoski Memorial Opioid Safety Act.

In the time requested for transmittal of follow-up views, VA was not able to include in this letter the following views: sections 2 and 4 of S. 297, the Frontlines to Lifelines Act of 2015; the draft bill on establishing a joint VA-Department of Defense formulary for systemic pain and psychiatric medications; sections 2, 3, and 5 of the draft Veterans Health Act of 2015, sections 203, 208, and 209(b) of S. 469, the Women Veterans and Families Health Services Act of 2015; sections 4(b) and 8 of S. 1085, the Military and Veteran Caregiver Services Improvement Act of 2015; and sections 105, 205, 403, and 501 of the Jason Simcakoski Memorial Opioid Safety Act. The remaining views can be forwarded in a separate and final follow-up views letter.

We appreciate the opportunity to comment on this legislation and look forward to working with you and other Committee Members on these important legislative issues.

Sincerely,

  
Robert A. McDonald

Enclosure

June 3, 2015, Agenda

\* \* \* \* \*

**Draft Bill, Veterans Health Act of 2015**

\* \* \* \* \*

Section 5 would require VA to make available on an Internet Web site data files that contain information on research of the Department, a data dictionary on each data file, and instructions for how to obtain access to each data file for use in research. It would also require, within 18 months of the date of the enactment of this Act, that any final, peer-reviewed manuscript prepared for publication that uses data gathered or formulated from research funded by the Department be submitted to the Secretary for deposit in a digital archive. VA would be required to establish this archive within 18 months of the date of the enactment of the Act or to partner with another executive agency to compile such manuscripts in a digital archive. The digital archive would have to be publicly available on an Internet Web site, and each manuscript would have to be available through the archive within 1 year of the official date on which the manuscript is published. VA would also be required, within 1 year of making manuscripts available and annually thereafter, to report to Congress on the implementation of this section. Finally, within 1 year of the date of the enactment of this Act, the VA-Department of Defense (DoD) Joint Executive Committee would be required to submit to the VA and DoD Secretaries options and recommendations for the establishment of a program for long-term cooperation and data sharing between the two Departments.

VA is still analyzing this section and would be glad to provide views at a later time.

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**Draft Bill, Discussion Draft**

Section 2 of the discussion draft would require, within 2 years of enactment, the Secretary, in consultation with the Secretary of Defense and such agencies and individuals the Secretary considers appropriate, to submit a report to Congress. The report would include the extent to which Laotian military forces provided combat support to the Armed Forces of the United States between February 28, 1961, and May 15, 1975; whether the current classification of the service by individuals of the Hmong ethnicity by the Civilian/Military Service Review Board of DoD is appropriate; and any recommendations for legislative action.

VA does not support this section because DoD is in a better position than VA to research this issue. In determining whether a claimant is eligible for a VA benefit, VA is legally bound by service department determinations as to what service a claimant performed.

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U.S. DEPARTMENT OF VETERANS AFFAIRS,  
*Washington, September 4, 2015.*

Hon. JOHNNY ISAKSON,  
*Chairman,*  
*Committee on Veterans' Affairs,*  
*U.S. Senate, Washington, DC.*

DEAR MR. CHAIRMAN: The agenda for the Senate Committee on Veterans' Affairs' June 3, 2015, and June 24, 2015, legislative hearings included a number of bills that the Department of Veterans Affairs (VA) was unable to address in our testimony or in our prior correspondence with you on July 15, 2015. By this letter, we are providing the final remaining views and cost estimates on the following bills from the June 3, 2015, legislative hearing: sections 2 and 4 of S. 297, the Frontlines to Lifelines Act of 2015; the draft bill on establishing a joint VA-Department of Defense (DOD) formulary for systemic pain and psychiatric medications; and sections 2, 3, and 5 of the draft bill, Veterans Health Act of 2015.

We are also providing the final remaining views and cost estimates on the following bills from the June 24, 2015, legislative hearing: sections 203, 208, and 209(b) of S. 469, Women Veterans and Families Health Services Act of 2015; sections 4(b) and 8 of S. 1085, Military and Veteran Caregiver Services Improvement Act of 2015; and sections 105, 205, 403, and 501 of the Jason Simcakoski Memorial Opioid Safety Act.

We appreciate this opportunity to comment on this legislation and look forward to working with you and the other Committee Members on these important legislative issues.

Sincerely,

ROBERT A. McDONALD,  
*Secretary.*

Enclosure.

JUNE 3, 2015

S. 297, FRONTLINES TO LIFELINES ACT OF 2015

Section 2 of S. 297 would require VA to revive the Intermediate Care Technician Pilot Program of the Department of Veterans Affairs (VA) that was carried out between January 2013 and February 2014. VA would be required to expand the pilot program to include not less than 250 intermediate care technicians in the pilot program. It would also permit VA to assign any intermediate care technician hired under this program to a VA medical facility, with the Secretary giving priority to facilities at which Veterans have the longest wait times for appointments for the receipt of hospital care or medical services. The pilot would be authorized during the 3-year period beginning on the date of the enactment of this Act.

As we explained in a response to a question from Senator Rounds at the hearing, we are currently working to expand the program beyond emergency services, most notably to increase support in podiatry and surgical clinics given the qualifications of those participating in the earlier pilot program. We do not require additional legislation for this expansion of the program, and consequently, VA does not support section 2 of this bill because we are already moving ahead with a permanent program, rather than a pilot program.

Section 4(a) of S. 297 would give discretion to the Secretary to authorize “covered nurses” to practice independently, without supervision or direction of others, under a set of privileges approved by the Secretary. Such authority would be notwithstanding any provision of state law and regardless of the state in which the covered nurse would be employed by VA. Section 4(b) would define a “covered nurse” as an advanced practice registered nurse (APRN) who is employed by VA in any of the following specializations: Nurse Midwife, Clinical Nurse Specialist (with respect to the provision of mental health care), and Nurse Practitioner.

VA supports the intent of section 4, but we offer four recommendations for technical revisions to the legislation. First, we recommend adding a reference to state of licensure in section 4(a). This would enable the Secretary to standardize the practice of APRNs throughout VA’s health care system, regardless of the state(s) in which they are licensed and/or employed by VA. This technical revision would facilitate the provision of additional health care services in medically-underserved areas, thereby increasing access to high quality health care for all Veterans.

Second, we recommend that the phrase “under a set of privileges approved by the Secretary” be deleted from section 4(a), as unnecessary. To practice professionally, all health care providers must be granted a scope of practice or clinical privileges by the medical facility where they work.

Third, we recommend that the word “Licensed Certified” be added to the titles of Nurse Midwife, Clinical Nurse Specialist, and Nurse Practitioner.

Fourth, we recommend that Section 4 contain a new subsection (c) to clarify that covered nurses may prescribe controlled substances provided they are authorized by their state licensure to do so and comply with the limitations and restrictions on that prescribing authority.

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#### DRAFT BILL, VETERANS HEALTH ACT OF 2015

Section 2 of the draft bill, “Veterans Health Act of 2015,” would amend the definition of “preventive health services” in 38 United States Code (U.S.C.) 1701(9) to include immunizations against infectious diseases, including each immunization on the recommended adult immunization schedule at the time such immunization is indicated by the Advisory Committee on Immunization Practices established by the Secretary of Health and Human Services and delegated to the Centers for Disease Control and Prevention. It would also modify the requirements of the annual report to Congress on preventive health services by including a requirement to report on VA’s programs to provide Veterans each immunization on the recommended adult immunization schedule at the time such immunization is indicated. Finally, section 2 would require VA, within 2 years of enactment of the Act, to submit to Congress a report on the development and implementation of quality measures and metrics, including targets for compliance, to ensure Veterans receiving medical services receive each immunization on the recommended adult immunization schedule at the time such immunization is indicated.

VA strongly supports preventive care measures, including making a wide range of immunizations available at VA medical facilities. However, because we believe VA is already satisfying the purpose of this bill, we do not support this legislation. Under current policy, VA already provides preventive immunizations at no cost to the Veteran. In addition, VHA is represented as an ex-officio member of the Advisory Committee on Immunization Practices (ACIP), and VA develops clinical preventive services guidance statements on immunizations in accordance with ACIP recommendations. All ACIP-recommended vaccines are available to Veterans at VA medical facilities. These vaccines currently include: hepatitis A, hepatitis B, human papillomavirus, influenza, measles/mumps/rubella, meningococcal, pneumococcal, tetanus/diphtheria/pertussis, tetanus/diphtheria, varicella, and zoster. As the ACIP recommendations change, VHA policy reflects those changes.

The delivery of preventive care, including vaccinations, has been well established in the VHA Performance Measurement system for more than 10 years with targets that are appropriate for the type of preventive service or vaccine. VA updates the performance measures to reflect changes in medical practice over time.

Section 3 would require VA to carry out a program to provide chiropractic care and services to Veterans through VA medical facilities at not fewer than two VA medical centers in each VISN by not later than 2 years after the date of the enactment of this Act,

and at not fewer than 50 percent of all VA medical centers in each VISN by not later than 3 years after the date of the enactment of this Act. It would also modify 38 U.S.C. 1701 to amend the definition of “medical services” to include chiropractic care and would amend the definition of “preventive health services” to include periodic and preventive chiropractic examinations and services.

VA supports the intent of section 3 of this bill, conditioned on the availability of additional resources to implement this provision. Expanding the number of VA medical facilities providing on-station chiropractic care would serve the needs of Veterans in expanding the availability of evidence-based treatment for musculoskeletal pain conditions that are highly prevalent in Veterans. Chiropractic treatment has been shown to be clinically effective, cost effective, and in high demand by Veterans. Patients who have access to chiropractic care are less likely to receive opiate medications and spinal surgeries. Just this year, The Joint Commission added chiropractic care to its pain management standards.

Additionally, VA has already been expanding access to chiropractic services for Veterans. In fiscal year (FY) 2014, VA provided on-station chiropractic care to 26,395 Veterans, an increase of 14 percent from FY 2013. As of May 2015, 52 VA medical centers have chiropractic clinics, up from 47 in FY 2014. Nevertheless, VA continues to face significant variation in access to chiropractic care across the country. Therefore, expanding the minimum number of chiropractic clinics per VISN will facilitate providing these services to Veterans in a more equitable manner.

We offer two recommendations for technical revisions to the legislation. First, we recommend removing the reference to clinics in the proposed amendment to section 204(c) of Public Law 107–135. This change would focus the language on VA medical centers and would not result in confusion over whether clinic referred to a service at a medical center or an independent clinic at another location. Second, we recommend the legislation not amend the definition of preventive health services in section 1701(9). Chiropractic services are provided as part of the medical benefits package and are administered based on clinical need, similar to all other medical care. It would be inconsistent with the professional standards for other medical disciplines and inappropriate to provide “periodic and preventative chiropractic examination and services” when there are no clinical indications that such care is needed.

We estimate that VA would need to add chiropractic services at five facilities to meet the requirement to operate the program at not fewer than two VA medical centers in each VISN within 2 years of the date of the enactment of this Act, and at another 23 facilities to meet the requirement that these services be available at not fewer than 50 percent of all VA medical centers in each VISN within 3 years of the date of the enactment of this Act. We estimate that the cost to hire these additional staff would be \$3.67 million per year after the requirements of section 3 are fully phased in.

Section 5 would require VA to make available on an Internet website data files that contain information on research of the Department, a data dictionary on each data file, and instructions for how to obtain access to each data file for use in research. It would



also require, within 18 months of the date of the enactment of this Act, that any final, peer-reviewed manuscript prepared for publication that uses data gathered or formulated from research funded by the Department be submitted to the Secretary for deposit in a digital archive. VA would be required to establish this archive within 18 months of the date of the enactment of the Act or to partner with another executive agency to compile such manuscripts in a digital archive. The digital archive would have to be publicly available on an Internet website, and each manuscript would have to be available through the archive within 1 year of the official date on which the manuscript is published. VA would also be required, within 1 year of making manuscripts available and annually thereafter, to report to Congress on the implementation of this section. Finally, within 1 year of the date of the enactment of this Act, the VA-DOD Joint Executive Committee would be required to submit to the VA and DOD Secretaries options and recommendations for the establishment of a program for long-term cooperation and data sharing between the two Departments.

VA supports the goal of this bill and is already taking action to achieve its objectives. Public access to research has been an increasingly important topic among Federal research agencies over the past several years. As a result, most of what is required in this bill has already been accomplished or is in process. On February 22, 2013, the White House Office of Science and Technology Policy (OSTP) directed each Federal agency with over \$100 million in annual expenditures for the conduct of research and development to develop a plan to support increased public access to the results of research funded by the Federal Government, including any results published in peer-reviewed scholarly publications that are based on research that directly arises from Federal funds. The bill's requirement to make information on VA research publicly available on an Internet website is nearly identical to requirements established by OSTP. Similarly, VA has already taken steps to satisfy the bill's requirement that VA ensure public access to manuscripts on VA-funded research. All VA-funded investigators are required to place their published manuscripts on the National Institutes of Health (NIH) PubMed, which provides manuscripts free to the public. Use of PubMed ensures that texts and their associated content will be stored in non-proprietary and/or widely-distributed archival, machine readable formats; provide access to persons with disabilities in accordance with Section 508 of the Rehabilitation Act of 1973; enable interoperability with other Federal public access archival solutions and other appropriate archives; and ensure that attribution to authors, journals, and original publishers will be maintained. VA also currently requires, and will continue to require, that the results of applicable VA-funded clinical trials must be provided to the public through the ClinicalTrials.gov archive, which provides access to the results of clinical trials involving products regulated by the Food and Drug Administration. Additionally, VA is working with DOD to develop data sharing agreements, and several such agreements are already in place.

We are concerned that the bill, as written, would greatly increase costs to the Department and may inadvertently limit the public availability of manuscripts. As stated, VA is currently making

much of this information public, but through other mechanisms, such as PubMed or ClinicalTrials.gov. Requiring VA to develop its own website would require additional expenses with no net benefit in terms of the availability of information. Additionally, creating a separate repository for this information from PubMed or ClinicalTrials.gov would spread information among several Federal websites, making it more difficult for users to find information. VA is unable to offer a cost estimate at this time because we cannot determine the information technology (IT) costs associated with these requirements.

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On May 13, 2015, Anthony Kurta, Deputy Assistant Secretary of Defense, Military Personnel Policy, Department of Defense, appeared before the Committee on Veterans' Affairs and submitted testimony on various bills incorporated into the Committee bill. An excerpt from that testimony is reprinted below:

STATEMENT OF ANTHONY KURTA, DEPUTY ASSISTANT  
SECRETARY OF DEFENSE, MILITARY PERSONNEL POLICY,  
U.S. DEPARTMENT OF DEFENSE

Good afternoon, Chairman Isakson, Ranking Member Blumen-  
thal, and esteemed Members of the Committee. I am pleased to ap-  
pear before you today to discuss pending benefits legislation.

Per the agenda for today's hearing, the Committee requested the  
Department of Defense's view on a series of bills and proposals.  
Since both funding and administration of the Post-9/11 GI Bill fall  
under the purview of the Department of Veterans Affairs, I will  
focus my comments only on those proposals that will affect the De-  
partment of Defense and generally defer to the Departments of  
Labor and Veterans Affairs to provide responses on those with no  
significant DOD impacts. This statement will follow the order on  
the printed agenda.

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DRAFT BILL, 21ST CENTURY VETERANS BENEFITS DELIVERY ACT

Section 101, "Improvements To Transition Assistance Program,"  
of this bill states that an individual subject to the requirement  
under subsection (c), which requires participation in the program  
(defined as employment assistance, job training assistance and  
other transitional services), may not satisfy such requirement by  
participating in the program carried out under this section solely  
through an Internet Web site. The Department of Defense does not  
support that portion of the language. The Administration should  
have flexibility in determining what methods and tools, to include  
Internet Web sites, should be used to deliver transition services to  
eligible transitioning Servicemembers and their spouses. This lan-  
guage would take away the flexibility to make such decisions. The  
Department of Defense and our interagency partners have agreed  
to allow Servicemembers who are subject to a short-notice separa-  
tion or are geographically remote and isolated, to use the Depart-  
ment of Veterans Affairs Benefits module (part of full Transition  
Assistance Program (TAP) virtual curriculum) and the Department  
of Labor Employment Workshop through Joint Knowledge Online,  
which connects to other Department of Defense systems for manda-  
tory attendance tracking. Implementation of this restrictive lan-  
guage would end that initiative and the millions of dollars invested  
in our on-line curriculum would be lost. The Department of Defense  
must have the flexibility to meet the needs of our Servicemembers;  
we strongly advocate that the Congress not deprive the Secretary  
of Defense of this flexibility.

Section 101 also requires the Secretary of Defense, in collabora-  
tion with the Secretaries of Labor, Homeland Security, and Vet-  
erans Affairs to establish a process to allow a representative of a

Veteran Service Organization (VSO) to be present at the benefits portion of the program under Section 1144, title 10, United States Code (the program under Section 1144 pertains to employment assistance, job training assistance and other transitional services) relating to the submission of claims to the Secretary of Veteran Affairs. The Department of Defense does not support this provision. The Department of Defense recognizes and appreciates the tremendous support VSOs provide to Servicemembers who file claims with the VA. However, we believe that process best occurs outside the standard TAP classroom in a one-on-one private conversation between the Servicemember and the VSO representative. The redesigned TAP focus is to make Servicemembers career ready by meeting Career Readiness Standards. The preparation occurs in the classroom with the delivery of Transition GPS (Goals, Plans, Success) curriculum. The Department of Veterans Affairs provides two robust classes: VA Benefits I, which focus on VA Benefits, and VA Benefits II, which introduces Servicemembers to, and walks them through, the process of filing a claim for Department of Veterans Affairs benefits. It would be more appropriate at the conclusion of VA Benefits II briefing for the Department of Veterans Affairs instructor delivering the briefing to introduce the VSO representative who can assist Servicemembers with their claims. The VSO representative can connect with Servicemembers at the end of the class. At that time the VSO representative can set up one-on-one appointments to assist those Servicemembers planning to file a claim.

Finally, the Department of Defense opposes that provision in section 101 that requires the Secretary of Defense to provide a report to Congress that assesses the compliance of facilities of the Department of Defense per the Secretary's Memorandum title "Installation Access and Support Services for Nonprofit Non-Federal Entities" dated December 23, 2014. This would require a tracking and reporting system to capture how many Veterans and Military Service organizations and other Nonprofit Non-Federal Entities are on each installation and the number of installations in compliance with the Secretary's Memorandums. This will pose a significant burden/hardship upon the installation staff and cause a diversion of already limited and stretched transition resources from the primary mission of the redesigned TAP.

#### MILITARY COMPENSATION AND RETIREMENT MODERNIZATION COMMISSION REPORT

The committee requested input from the Department of Defense on the legislative proposals in two of the recommendations in the recently released Military Compensation and Retirement Modernization Commission Report: Recommendation 11: Safeguard education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs, and Recommendation 12: Better prepare Servicemembers for transition to civilian life by expanding education and granting states more flexibility to administer the Jobs for Veterans State Grants Program. I would like to state up front that the Department of Defense worked closely with the Commission in evaluating its recommendations, and included experts from the Departments of Labor and

Veterans Affairs, as well as the Office of Management and Budget, in our working groups designed to formulate DOD's response to the President.

RECOMMENDATION 11: SAFEGUARD EDUCATION BENEFITS FOR SERVICEMEMBERS BY REDUCING REDUNDANCY AND ENSURING THE FISCAL SUSTAINABILITY OF EDUCATION PROGRAMS

The Department agrees with the Commission's objectives of safeguarding education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs. We support sun-setting both the Montgomery GI Bill (chapter 30 of title 38, United States Code, also known as MGIB-AD) and the Reserve Education Assistance Program (REAP), with a view to maintaining the Post-9/11 GI Bill as the primary education benefit. The Commission and the Department also agree that in order to keep faith with our Servicemembers, we must grandfather those who already have the benefits that will be phased out. Further, the Department and the Commission agree on how best to achieve the objective of collecting, tracking, and reporting on Servicemember, Veteran, or dependent education related data. The Commission recommends requiring that Tuition Assistance be used for "professional development" courses only. DOD has already issued policy guidance to the Services to this effect where all signatories of the Department of Defense Education Partnership Memorandum of Understanding must provide an approved education plan for each Tuition Assistance recipient. This plan provides the roadmap for their educational goal development to include supporting courses.

The Department would like to ensure that once the MGIB-AD sunsets, Servicemembers will be able to combine Post-9/11 GI Bill benefits with Tuition Assistance (commonly referred to as "top up") using the same "top up" usage method as currently available under the MGIB-AD.

The Department submitted a legislative proposal to Congress on May 1 that would sunset the MGIB-AD and REAP, grandfather Servicemembers currently receiving those benefits, and provide a "top up" benefit.

Without data enabling the Department of Defense to understand the potential effects on retention, the Department of Defense—and the Joint Chiefs are particularly concerned on this point—cannot support the recommendation to sunset the Post-9/11 GI Bill housing stipend for dependents, or the recommendation to increase the eligibility requirements for transferring Post-9/11 GI Bill benefits. To this end, the Department of Defense has sponsored a study with RAND National Defense Research Institute to review education benefits for Servicemembers, including the benefits of the Post-9/11 GI Bill and their impacts on retention (with a focus on impacts of transferability). We anticipate the study to be completed in the summer of 2016, allowing the Department of Defense to evaluate the potential effects of altering the features of the benefit on retention.

Lastly, the Department of Defense does not support the recommendation that would prohibit ex-Servicemembers from receiving unemployment compensation (as authorized under chapter 85, subchapter II, of title 5, United States Code) while simultaneously

receiving the living stipend as part of Post-9/11 GI Bill benefits. State-level unemployment compensation programs already provide guidance regarding students' status within the workforce and eligibility to receive benefits (as detailed in Congressional Research Service Report, (Unemployment Compensation (UC): Eligibility for Students Under State and Federal Laws, dated September 7, 2012). Eliminating concurrent receipt of educational benefits and Unemployment Compensation for Ex-Service Members (UCX) may be viewed as penalizing Servicemembers who are pursuing courses at trade/vocational schools to acquire skills/certifications that would make them more employable. This Commission recommendation could also have a disproportionate impact on Reserve Component Servicemembers because both separated and currently serving Reserve Component members may be affected.

RECOMMENDATION 12: BETTER PREPARE SERVICEMEMBERS FOR TRANSITION TO CIVILIAN LIFE BY EXPANDING EDUCATION AND GRANTING STATES MORE FLEXIBILITY TO ADMINISTER THE JOBS FOR VETERANS STATE GRANTS PROGRAM

The Department of Defense supports the Commission's objective of better preparing Servicemembers for transition to civilian life, but does not believe additional legislation is required. The Department of Defense has significantly re-designed the Transition Assistance Program over the last 2 years and implemented the VOW to Hire Heroes Act legislation enacted in 2011; these modifications significantly address the Commission's objectives.

The Department of Defense, together with the Departments of Labor and Veterans Affairs, has developed Transition Assistance Program curriculum to support Servicemembers' educational goals. The Accessing Higher Education (AHE) track focuses transitioning Servicemembers on selecting an institution of higher education and achieving academic success. The Career Technical Training (CTT) track focuses on credentials earned during military service and higher education in select technical training schools and fields. The Department of Defense concurs with mandatory participation in the AHE or CTT track, for Servicemembers who identify an interest in attending college or a career technical school after separation, with authorized exemptions. Contrary to the re-designed Transition Assistance Program, the Commission proposal does not enable transition planning according to the individual goals and needs of each transitioning Servicemember. The proposed legislation is a "one size fits all" approach and does not take into consideration the numerous other education benefits active duty Servicemembers have, or are eligible for, prior to separating, such as tuition assistance and the GI Bills. These other benefits require an education plan and individual counseling with an education professional. Furthermore, the proposed legislation does not appear to consider how it might affect those Servicemembers who enter on active duty with a college diploma, credential and/or license.

The Department of Veterans Affairs is developing a module specifically focused on the benefits, eligibility, and transferability of the Post-9/11 GI Bill as part of military career deliberations. The goals of the Commission's recommendation will be met as a result of Servicemembers attending the new Department of Veterans Af-

fairs training for Post-9/11 GI Bill benefits prior to developing an education program plan or using their Post-9/11 GI Bill benefits. Expected implementation date for the new Post-9/11 GI Bill training is October 1, 2015.

The Commission's legislative proposal to review and evaluate the core Transition Goals, Plans, Success (GPS) curriculum is aligned with the current Department of Defense and TAP Inter-agency Evaluation Strategy. New legislation is not required because an interagency annual review is a pillar of the Office of Management and Budget approved TAP Evaluation Strategy. This strategy requires analysis of metrics and benchmark performance criteria to enable the Department of Defense to provide programs and support to meet the needs of transitioning Servicemembers. It necessitates an annual review of all curriculum components in concert with participant feedback to ensure curriculum and training resources support the achievement of career readiness standards and career success post military service.

The Transition Assistance Program Inter-agency Curriculum Working Group, comprised of members from each of the TAP Inter-agency partners, the Military Services, and relevant subject matter experts, conducts an annual review of the Transition GPS curriculum. The Working Group develops changes based on content relevancy, participant assessments, Servicemember feedback, roles and responsibilities of partners, facilitator recommendations, and best practices and lessons learned as a result of staff assistance visits to installations. Proposed curriculum revisions are vetted and approved by the TAP Inter-agency Executive Council.

#### DEPARTMENT OF DEFENSE LEGISLATIVE PROPOSALS

The committee requested input on several of the Legislative Proposals included in the Department of Defense National Defense Authorization Act for Fiscal Year 2016 submission.

*Sec. 514. Inclusion of duty performed by a reserve component member under a call or order to active duty for medical purposes as qualifying active duty time for purposes of Post-9/11 GI Bill education benefits*

Similar to S. 602, "GI Bill Fairness Act of 2015," this section includes active duty performed under the authority of title 10, United States Code, section 12301(h), as qualifying active duty for the purposes of Post-9/11 GI Bill Education Benefits. As pointed out in my discussion of that bill, the Department's proposal differs in that it is not retroactive to September 11, 2001. The Department of Defense urges adoption of this proposal.

*Sec. 522. Retention of entitlement to educational assistance during certain additional periods of active duty*

This section would amend chapter 1606, (Montgomery GI Bill-Selected Reserve (MGIB-SR) of title 10, United States Code. Specifically this proposal would add 10 United States Code 12304a and 12304b to the existing list of authorities in 10 United States Code 16131 under which a servicemember may regain lost payments. Further, both 10 United States Code 12304a and 12304b would be added to 10 United States Code 16133 under which a

Servicemember may regain lost entitlement time for MGIB-SR benefits. The Department of Defense urges adoption of this proposal.

*Sec. 542. Update to involuntary mobilization duty authorities exempt from 5-year limit under the Uniformed Services Employment and Reemployment Rights Act*

This section would amend section 4312 of title 38, United States Code, to update the involuntary mobilization authorities exempted from the Uniformed Services Employment and Reemployment Rights Act (USERRA) 5-year limit. Adding references to sections 12304a and 12304b of title 10 will complete the list of current involuntary mobilization authorities exempted from that limit in section 4312 of title 38.

USERRA, codified in 38 U.S.C. 4301–4335, protects individuals performing, or who have performed or will perform, uniformed service from employment discrimination on the basis of their uniformed service. It provides for prompt reemployment when they return to civilian life. The Department of Defense urges adoption of this proposal.

*Sec. 545. Required provision of pre-separation counseling*

This section would amend section 1142 and 1144 of Title 10, United States Code, to authorize Pre-separation, Employment Assistance and all other transition services prescribed in Department of Defense policy by the Secretary of Defense for ALL Active Component Servicemembers of the Armed Forces and for ALL National Guard and Reserve Servicemembers called or ordered to active duty or full-time operational support after completion of their first 180 continuous days or more under Title 10, United States Code, (other than for full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as service school by law or by the Secretary of the military department concerned), whose discharge or release from active duty is anticipated as of a specific date. The Department of Defense urges adoption of this proposal.

*Sec. 1041. Transfer of functions of the Veterans' Advisory Board on Dose Reconstruction to the Secretaries of Veterans Affairs and Defense*

This section would repeal the statutory requirement for a Federal Advisory Committee Act (FACA) advisory board for the Radiation Dose Reconstruction Program. The Department of Defense believes that this advisory board has achieved its objectives, and that its functions can now be more effectively conducted through an interagency effort rather than through a FACA advisory board. The Department of Defense urges adoption of this proposal.

The final item on the agenda is a discussion of provisions derived from a series of pending bills. I will comment only on those that affect the Department of Defense.

#### S. 151. FILIPINO VETERANS PROMISE ACT

This bill would require the Secretary of Defense to establish a process to determine whether individuals claiming certain service in the Philippines during World War II are eligible for certain ben-



efits despite not being on the so-called “Missouri List.” The Department does not support any further legislation concerning determining service eligibility for the WWII Filipino Guerilla Veterans. The Army has a program in place that is verifiable. This program, due to its thorough processes, is the foundation for the Army’s position, past and current, for making final service determinations for eligibility. The Army maintains complete confidence that the records and files completed in 1948 provide the best and most accurate determinations that could have been made from that time until today.

#### S. 743. HONOR AMERICA’S GUARD-RESERVE RETIREES ACT OF 2015

This bill amends title 38, United States Code, to recognize the service in the reserve components of the Armed Forces of certain persons by honoring them with status as Veterans under law, and for other purposes. The Department recognizes and values the service of these Servicemembers who qualify for a Reserve retirement, but may not be Veterans, but opposes identifying these Servicemembers with any type of honorary Veteran status. Although S. 743 defines this honorary status to be without eligibility for Veteran’s benefits from the Department of Veterans Affairs, the Department of Defense believes this honorary status would create confusion about eligibility for the Department of Veterans Affairs benefits among the current and former Servicemembers and could increase the potential for error in determining benefits entitlements.

Mr. Chairman this concludes my statement. As has been stated numerous times in hearings before this committee, post service education benefits have been a cornerstone of our military recruiting and retention efforts since 1985, and a major contributor to the continued success of the All-Volunteer Force. Money for education has been and remains at the forefront of reasons cited by young Americans for joining the military. From its inception we fully expected the Post-9/11 GI Bill to continue to have this impact and we are seeing that happen in the form of sustained recruiting success. I thank you and the members of this Committee for your outstanding and continuing support of the men and women of the Department of Defense. We look forward to working closely with you to strengthen the All-Volunteer force through a balanced program of recruiting, retention, and vital education benefits, and to recognize the service of our Veterans.

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On May 13, 2015, Teresa W. Gerton, Deputy Assistant Secretary for Policy, Veterans’ Employment and Training Service, Department of Labor, appeared before the Committee and submitted testimony on various bills incorporated into the Committee bill. An excerpt from that testimony is reprinted below:

STATEMENT OF TERESA W. GERTON, DEPUTY ASSISTANT  
SECRETARY FOR POLICY, VETERANS' EMPLOYMENT AND  
TRAINING SERVICE, U.S. DEPARTMENT OF LABOR

INTRODUCTION

Good afternoon, Chairman Isakson, Ranking Member Blumenthal, and distinguished Members of the Committee. Thank you for the opportunity to participate in today's hearing. I would like to thank the Commission, which was assigned to develop the Military Compensation and Retirement Modernization (MCRMC) Report, for all its hard work. As President Obama indicated, the report's recommendations "represent an important step forward in protecting the long-term viability of the All-Volunteer Force," and "improving quality-of-life for servicemembers and their families." As Deputy Assistant Secretary for Policy at the Veterans' Employment and Training Service (VETS) at the Department of Labor (DOL or Department), I appreciate the opportunity to discuss the Department's views on pending legislation and proposals impacting veterans.

The Department's charter, for over 100 years, has been to "foster, promote and develop the welfare of working people, to improve their working conditions, and to enhance their opportunities for profitable employment." The Department's collective resources and expertise are integrated with state workforce agencies and local communities to meet the employment and training needs of all Americans, including veterans, transitioning servicemembers, members of the National Guard and Reserve, their families, and survivors.

As the Federal Government's leader on veterans' employment, VETS ensures that the full resources of the Department are readily available for veterans and servicemembers seeking to transition into the civilian labor force. VETS' mission is focused on four key areas: (1) preparing veterans for meaningful careers; (2) providing them with employment resources and expertise; (3) protecting their employment rights; and, (4) promoting the employment of veterans and related training opportunities to employers across the country.

While this hearing addresses several legislative proposals, the Department limits its remarks to those legislative proposals that have a direct impact on the programs administered by the Department, specifically, the "21st Century Veterans' Benefits Delivery Act," and the legislative proposals based on MCRMC Recommendations 11 and 12.

S. 1203, "21ST CENTURY VETERANS BENEFITS DELIVERY ACT"

The draft Senate bill, "21st Century Veterans Benefits Delivery Act," seeks to amend title 38 of the U.S. Code, to improve the processing by the Department of Veterans Affairs (VA) of claims for

benefits under laws administered by the Secretary of Veterans Affairs, and for other purposes.

#### *Section 101*

Section 101 would amend section 1144 of title 10 of the U.S. Code, adding subsection (f) to require modifications to the VA's eBenefits Web site, which would ensure that servicemembers, veterans, and their spouses have access to the Transition Assistance Program (TAP) online curriculum, as administered by the Secretary of Labor, the Secretary of Defense, the Secretary of Homeland Security, and the Secretary of Veterans Affairs. The Department believes that it has already met the intent of this proposal. DOL has worked with the Department of Defense (DOD) and VA to host the TAP curriculum online. Currently, servicemembers and their spouses are able to access the entire Transition GPS curriculum online via DOD's Joint Knowledge Online, the VA's eBenefits Web site, or DOL VETS' Web site. Section 101 also states: "An individual subject to a requirement under subsection (c) may not satisfy such requirement by participating in the program carried out under this section solely through an Internet Web site." DOL appreciates the intent of this statement and notes that the vast majority of servicemembers who attend our employment workshop do so in person. We defer to DOD on the impact of this requirement, and to the VA on the inclusion of our Veterans Service Organization (VSO) partners.

#### LEGISLATIVE PROPOSALS FROM THE MCRMC REPORT

The Administration has indicated its general support for Recommendations 11 and 12, in the Presidential Memorandum issued on April 30, 2015. As DOL recently shared with the staff of this Committee, the Department has initiated many of the Commission's recommendations prior to publication of the Commission's report. Accordingly, any legislative proposal to implement these recommendations should be modified to reflect these recent VETS program improvements, as well as to ensure continued access to unemployment benefits for servicemembers who need income support, while availing themselves of educational and training programs.

#### *Recommendation 11*

Recommendation 11, "Safeguard education benefits for Servicemembers by reducing redundancy and ensuring the fiscal sustainability of education programs," is primarily directed toward DOD and VA, who administer a myriad of benefit programs for servicemembers. The Department generally supports Recommendation 11. The sub-recommendation of interest to DOL would prevent individuals receiving housing stipend benefits under the Post-9/11 GI Bill from simultaneously receiving unemployment insurance (UI). This sub-recommendation would amend title 5 of the U.S. Code, at section 8525, on Unemployment Compensation for Ex-Servicemembers (UCX), as well as any other regulation and policy pertaining to section 8525. The MCRMC's companion legislative proposal to implement this sub-recommendation is contained in Section 1109, Unemployment Insurance.

To achieve the goal of safeguarding education benefits of servicemembers, it is necessary that servicemembers have adequate income support to take advantage of these programs. The Department would like to ensure equitable treatment for servicemembers compared to their civilian counterparts, who also are seeking UI benefits for approved training. The receipt of other benefits, such as the Post-9/11 GI Bill retraining incentives or housing benefits, currently do not prevent veterans from taking advantage of the same provision given to regular (civilian) unemployment insurance (UI) recipients when training is approvable/approved under state law.

Providing income support for servicemembers eligible for UCX helps to ensure that their retraining leads to employment in a more sustainable labor market after specialized military service. Unemployment insurance is designed to provide benefits for workers to enable their successful transition to new employment; it is affirmatively intended to provide for costs of living beyond housing. Additionally, State UI laws contain requirements regarding an individual's availability for work, which entails being ready, willing, and able to work. This includes the requirement that a claimant receiving UCX register with the public employment service. Thus, receipt of UCX benefits connects veterans to reemployment services through the public workforce system, which in conjunction with receiving GI Bill benefits, helps to more effectively support the individual's successful reentry to civilian employment. Therefore, preventing GI Bill beneficiaries from receiving unemployment compensation may be a detriment to their successful reemployment. While the Department does not favor Section 1109 as currently drafted, we would be willing to continue discussions with Congress and the Department of Veterans Affairs on this issue.

#### *Recommendation 12*

Recommendation 12, "Better prepare Servicemembers for transition to civilian life by expanding and granting states more flexibility to administer the Jobs for Veterans State Grants Program," seeks to expand servicemembers' knowledge of educational benefits, improve Transition GPS, and improve the Jobs for Veterans State Grant (JVSG) program. The Department generally supports Recommendation 12; for purposes of this hearing, the Department will focus specifically on the following sub-recommendations:

(1) The Congress should require DOD, VA, and DOL to review and report on the core curriculum for Transition GPS to reevaluate if the current curriculum most accurately addresses the needs of transitioning Servicemembers. This report should include review of the current curriculum; the roles and responsibilities of each Department and whether they are adequately aligned; and the distribution of time between the three departments in the core curriculum and whether it is adequate to provide all information regarding important benefits that can assist transitioning Servicemembers. This review should indicate whether any of the information in the three optional tracks should be addressed instead in mandatory tracks. It should also include a standard implementation plan of long-term outcome measures for a comprehensive system of metrics. This review should identify any areas of concern re-

garding the program and recommendations for addressing those concerns.

DOL notes that processes already in place address the intent of this proposal, and would be pleased to share our curriculum review results with this Committee. The MCRMC's companion legislative proposal to implement this sub-recommendation is contained in Section 1204, Transition GPS Program Core Curriculum Review and Report.

In Fiscal Year (FY) 2014, as a member of the TAP Senior Steering Curriculum Working Group with DOD and VA, the Department began an annual curriculum evaluation. This evaluation included analysis of results from the web-based Transition GPS participant survey instrument developed by DOD, and input from various stakeholders. Based on this evaluation, the Department revised the TAP Employment Workshop curriculum to include Equal Employment Opportunity and Americans with Disability Act content, the Veterans Employment Center content, and enhanced information on Workforce Investment Act training, dislocated worker training, and Registered Apprenticeship programs.

The FY 2015 curriculum review began in April 2015, in conjunction with the TAP Senior Steering Curriculum Working Group's planned review of the entire Transition GPS curriculum. Any changes that may result from this review should be available to transitioning servicemembers in November 2015. Additionally, the Department will address this sub-recommendation before the TAP Senior Steering Group for consideration in the FY 2015 curriculum review.

(2) The Congress should amend the relevant statutes to permit state departments of labor or their equivalent agencies to work directly with state Veterans Affairs directors or offices to coordinate implementation of the JVSG program.

DOL believes that it has already met the intent of this proposal, which is contained in Section 1202, Coordination with State Departments of Labor and VA. The process this proposal seeks to implement is already in place; the Department's standards of performance for each of the Directors for Veterans' Employment and Training (DVET) specifies in the "duties and responsibilities" section that each DVET must coordinate with state Departments of Labor and Veterans Affairs. Moreover, current law does not prohibit inter-agency coordination with respect to JVSG, including coordination with the VA (title 38, U.S. Code 4102A(b)(3)). In fact, the Workforce Innovation and Opportunity Act, passed in 2014, supports greater inter-agency cooperation. The public workforce system is designed to be a decentralized network of strong partnerships at the Federal, state, local, and regional levels.

(3) DOL should require One-Stop Career Centers to track the number of job fairs their employees participate in and the number of veterans they connect with at each job fair. This information should be included in each state's annual report to the DOL, and provided to the Congress.

The Department does not find American Job Center (AJC) staff attendance at Transition GPS Employment Workshops, job fair participation rates, or the number of transitioning servicemembers and veterans with whom JVSG staff interact to be measures reflec-

tive of meaningful outcomes data. Tracking these activities may, in fact, result in the unintended consequence of incentivizing the quantity of interactions between AJC staff and veterans, rather than the quality and effectiveness of the services AJC staff provide to veterans. Also, this proposal, contained in Section 1201, Job Fair Participation Rates, seeks to amend the Workforce Investment Act of 1998, which has been superseded by the Workforce Innovation and Opportunity Act (WIOA), making it difficult to interpret how it would be executed. Nevertheless, this proposal is not in keeping with Section 116 of WIOA (which replaced section 136 of WIA), which establishes common performance accountability measures that apply across the Department's core employment and training programs to assess the effectiveness of States and local areas in achieving positive outcomes for individuals served by related programs. While JVSG is not a core program under WIOA, 38 U.S.C. 4102A requires JVSG performance measures to "be consistent with" those under WIOA. The Departments of Labor and Education on April 16 jointly issued a WIOA Notice of Proposed Rulemaking seeking public comments on such topics as performance accountability to ensure that Federal employment and training program investments report on common performance indicators such as how many individuals, including veterans, entered employment and their median wages. The Departments welcome comments from this Committee on our proposal.

(4) The Congress should require a one-time joint report from DOD, VA, and DOL to the Senate and House Committees on Armed Services and Veterans' Affairs regarding the challenges employers face when seeking to hire veterans. The report should identify the barriers employers face gaining information identifying veterans seeking jobs. It should also include recommendations addressing barriers for employers and improving information sharing between Federal agencies that serve veterans and separating Servicemembers, so they may more easily connect employers and veterans. The report should also review the Transition GPS career preparation core curriculum and recommend any improvements that can be made to better prepare Servicemembers trying to obtain private-sector employment.

The Department supports the intent of this recommendation and looks forward to continuing our work with our Federal partners on this important issue. However, we already have gathered much information from employers on their challenges in hiring veterans. This is provided in recent reports, such as the 2014 RAND report titled, "Lessons from the 100,000 Job Mission." We already are working with agency partners to address many of those challenges. In addition, and given the volume of information and the workload required to obtain additional data, we recommend that we work with our agency partners to develop the information you believe would be helpful in assessing issues related to barriers to employers hiring veterans. We then can meet with you to share the requested material.

\* \* \* \* \*

## CONCLUSION

We at the Department of Labor remain committed to our Nation's veterans and we look forward to working with the Committee to ensure the continued success of our efforts. The Department lauds the hard work the Commission placed into their recommendations. It is our hope that the Committee will consider the modifications we have provided and is open to working with the Committee members to provide technical assistance. Mr. Chairman, Ranking Member Blumenthal, and Members of the Committee, this concludes my statement. Thank you again for the opportunity to testify today. I am happy to answer any questions that you may have.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman).

**Title 10. Armed Forces**

\* \* \* \* \*

**Subtitle A. General Military Law**

\* \* \* \* \*

**Part II. Personnel**

\* \* \* \* \*

**Chapter 58. Benefits and Services for Members Being Separated or Recently Separated**

\* \* \* \* \*

**SEC. 1142. PRESEPARATION COUNSELING; TRANSMITTAL OF MEDICAL RECORDS TO DEPARTMENT OF VETERANS AFFAIRS**

(a) REQUIREMENT.—

(1) \* \* \*

\* \* \* \* \*

(4)(A) Subject to subparagraph (B), the Secretary concerned shall not provide preseparation counseling to a member who is being discharged or released before the completion of that member's first *continuous* 180 days of active duty.

(B) \* \* \*

(C) *For purposes of subparagraph (A), the term “active duty” does not include full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by the Secretary concerned.*

\* \* \* \* \*

**Subtitle E. Reserve Components**

\* \* \* \* \*



## Part IV. Training for Reserve Components and Educational Assistance Programs

\* \* \* \* \*

### Chapter 1606. Educational Assistance for Members of the Selected Reserve

\* \* \* \* \*

#### SEC. 16131. EDUCATIONAL ASSISTANCE PROGRAM: ESTABLISHMENT; AMOUNT

\* \* \* \* \*

(c)(1) \* \* \*

\* \* \* \* \*

(3)(A) \* \* \*

\* \* \* \* \*

(B) \* \* \*

(i) had to discontinue such course pursuit as a result of being ordered to serve on active duty under section 12301(a), 12301(d), 12301(g), 12302, [or 12304] *12304*, *12304a*, or *12304b* of this title; and

(ii) \* \* \*

\* \* \* \* \*

#### SEC. 16133. TIME LIMITATION FOR USE OF ENTITLEMENT

(a) \* \* \*

(b)(1) In the case of a person—

\* \* \* \* \*

(4) In the case of a member of the Selected Reserve of the Ready Reserve who serves on active duty pursuant to an order to active duty issued under section 12301(a), 12301(d), 12301(g), 12302, [or 12304] *12304*, *12304a*, or *12304b* of this title—

\* \* \* \* \*

## Title 38. Veterans' Benefits

\* \* \* \* \*

### Part II. General Benefits

\* \* \* \* \*

#### Chapter 17. Hospital, Nursing Home, Domiciliary, and Medical Care

##### SUBCHAPTER I. GENERAL

Sec.

\* \* \* \* \*

##### SUBCHAPTER VIII. HEALTH CARE OF PERSONS OTHER THAN VETERANS

\* \* \* \* \*

1784. Humanitarian care.

1784A. *Examination and treatment for emergency medical conditions and women in labor.*

\* \* \* \* \*

## Subchapter I. General

\* \* \* \* \*

### SEC. 1701. DEFINITIONS

For the purposes of this chapter—

\* \* \* \* \*

(6) \* \* \*

\* \* \* \* \*

(H) *Chiropractic services.*

\* \* \* \* \*

(8) The term “rehabilitative services” means such professional, counseling, *chiropractic*, and guidance services and treatment programs as are necessary to restore, to the maximum extent possible, the physical, mental, and psychological functioning of an ill or disabled person.

(9) The term “preventive health services” means—

\* \* \* \* \*

(F) *periodic and preventive chiropractic examinations and services;*

(G) **[(F)]** immunizations against infectious disease;**] *immunizations against infectious diseases, including each immunization on the recommended adult immunization schedule at the time such immunization is indicated on that schedule;***

(H) **[(G)]** prevention of musculoskeletal deformity or other gradually developing disabilities of a metabolic or degenerative nature;

(I) **[(H)]** genetic counseling concerning inheritance of genetically determined diseases;

(J) **[(I)]** routine vision testing and eye care services;

(K) **[(J)]** periodic reexamination of members of likely target populations (high-risk groups) for selected diseases and for functional decline of sensory organs, together with attendant appropriate remedial intervention; and

(L) **[(K)]** such other health-care services as the Secretary may determine to be necessary to provide effective and economical preventive health care.

(10) The term “recommended adult immunization schedule” means the schedule established (and periodically reviewed and, as appropriate, revised) by the Advisory Committee on Immunization Practices established by the Secretary of Health and Human Services and delegated to the Centers for Disease Control and Prevention.

\* \* \* \* \*

**SEC. 1704. PREVENTIVE HEALTH SERVICES: ANNUAL REPORT**

(1) \* \* \*

(A) \* \* \*

(i) to educate veterans with respect to health promotion and disease prevention; [and]

(ii) to provide veterans with preventive health screenings and other clinical services, with such description setting forth the types of resources used by the Department to conduct such screenings and services and the number of veterans reached by such screenings and services[.] ; and

(iii) to provide veterans each immunization on the recommended adult immunization schedule at the time such immunization is indicated on that schedule.

\* \* \* \* \*

**Subchapter VIII. Health Care of Persons  
Other Than Veterans**

\* \* \* \* \*

**SEC. 1784. HUMANITARIAN CARE**

The Secretary may furnish hospital care or medical services as a humanitarian service in emergency cases, but the Secretary shall charge for such care and services at rates prescribed by the Secretary.

**SEC. 1784A. EXAMINATION AND TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND WOMEN IN LABOR**

(a) *IN GENERAL.*—In the case of a hospital of the Department that has an emergency department, if any individual comes to the hospital or the campus of the hospital and a request is made on behalf of the individual for examination or treatment for a medical condition, the hospital must provide for an appropriate medical screening examination within the capability of the emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists.

(b) *NECESSARY STABILIZING TREATMENT FOR EMERGENCY MEDICAL CONDITIONS AND LABOR.*—(1) If any individual comes to a hospital of the Department that has an emergency department or the campus of such a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(A) within the staff and facilities available at the hospital, for such further medical examination and such treatment as may be required to stabilize the medical condition; or

(B) for transfer of the individual to another medical facility in accordance with subsection (c).

(2) A hospital is deemed to meet the requirement of paragraph (1)(A) with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on behalf of the individual) of the risks and benefits to the individual of such examination and treatment, but the individual (or a person acting on behalf of the individual) refuses to consent to the exam-

ination and treatment. The hospital shall take all reasonable steps to secure the written informed consent of the individual (or person) to refuse such examination and treatment.

(3) A hospital is deemed to meet the requirement of paragraph (1) with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with subsection (c) and informs the individual (or a person acting on behalf of the individual) of the risks and benefits to the individual of such transfer, but the individual (or a person acting on behalf of the individual) refuses to consent to the transfer. The hospital shall take all reasonable steps to secure the written informed consent of the individual (or person) to refuse such transfer.

(c) *RESTRICTING TRANSFERS UNTIL INDIVIDUAL STABILIZED.*—(1) If an individual at a hospital of the Department has an emergency medical condition that has not been stabilized, the hospital may not transfer the individual unless—

(A)(i) the individual (or a legally responsible person acting on behalf of the individual), after being informed of the obligations of the hospital under this section and of the risk of transfer, requests, in writing, transfer to another medical facility;

(ii) a physician of the Department has signed a certification that, based upon the information available at the time of transfer, the medical benefits reasonably expected from the provision of appropriate medical treatment at another medical facility outweigh the increased risks to the individual and, in the case of labor, to the unborn child from effecting the transfer; or

(iii) if a physician of the Department is not physically present in the emergency department at the time an individual is transferred, a qualified medical person (as defined by the Secretary for purposes of this section) has signed a certification described in clause (ii) after a physician of the Department, in consultation with the person, has made the determination described in such clause, and subsequently countersigns the certification; and

(B) the transfer is an appropriate transfer to that facility.

(2) A certification described in clause (ii) or (iii) of paragraph (1)(A) shall include a summary of the risks and benefits upon which the certification is based.

(3) For purposes of paragraph (1)(B), an appropriate transfer to a medical facility is a transfer—

(A) in which the transferring hospital provides the medical treatment within its capacity that minimizes the risks to the health of the individual and, in the case of a woman in labor, the health of the unborn child;

(B) in which the receiving facility—

(i) has available space and qualified personnel for the treatment of the individual; and

(ii) has agreed to accept transfer of the individual and to provide appropriate medical treatment;

(C) in which the transferring hospital sends to the receiving facility all medical records (or copies thereof) available at the time of the transfer relating to the emergency medical condition for which the individual has presented, including—

(i) observations of signs or symptoms;

- (ii) preliminary diagnosis;
- (iii) treatment provided;
- (iv) the results of any tests; and
- (v) the informed written consent or certification (or copy thereof) provided under paragraph (1)(A);

(D) in which the transfer is effected through qualified personnel and transportation equipment, including the use of necessary and medically appropriate life support measures during the transfer; and

(E) that meets such other requirements as the Secretary considers necessary in the interest of the health and safety of individuals transferred.

(d) DEFINITIONS.—In this section:

(1) The term “campus” means, with respect to a hospital of the Department—

(A) the physical area immediately adjacent to the main buildings of the hospital;

(B) other areas and structures that are not strictly contiguous to the main buildings but are located not less than 250 yards from the main buildings; and

(C) any other areas determined by the Secretary to be part of the campus of the hospital.

(2) The term “emergency medical condition” means—

(A) a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that the absence of immediate medical attention could reasonably be expected to result in—

(i) placing the health of the individual (or, with respect to a pregnant woman, the health of the woman or her unborn child) in serious jeopardy;

(ii) serious impairment to bodily functions; or

(iii) serious dysfunction of any bodily organ or part;

or

(B) with respect to a pregnant woman who is having contractions—

(i) that there is inadequate time to effect a safe transfer to another hospital before delivery; or

(ii) that transfer may pose a threat to the health or safety of the woman or the unborn child.

(3)(A) The term “to stabilize” means, with respect to an emergency medical condition described in paragraph (2)(A), to provide such medical treatment of the condition as may be necessary to assure, within reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (2)(B), to deliver (including the placenta).

(B) The term “stabilized” means, with respect to an emergency medical condition described in paragraph (2)(A), that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during the transfer of the individual from a facility, or, with respect to an emergency medical condition described in paragraph (2)(B), that the woman has delivered (including the placenta).

(4) *The term “transfer” means the movement (including the discharge) of an individual outside the facilities of a hospital of the Department at the direction of any person employed by (or affiliated or associated, directly or indirectly, with) the hospital, but does not include such a movement of an individual who—*

*(A) has been declared dead; or*

*(B) leaves the facility without the permission of any such person.*

\* \* \* \* \*

### **Part III. Readjustment and Related Benefits**

\* \* \* \* \*

#### **Chapter 33. Post-9/11 Educational Assistance**

##### **SUBCHAPTER I. DEFINITIONS**

Sec.

\* \* \* \* \*

##### **SUBCHAPTER III. ADMINISTRATIVE PROVISIONS**

\* \* \* \* \*

3325. Reporting requirement.

3326. *Report on student progress.*

\* \* \* \* \*

#### **Subchapter III. Administrative Provisions**

\* \* \* \* \*

#### **SEC. 3325. REPORTING REQUIREMENT**

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(A) \* \* \*

(B) indicating whether it is necessary for the purposes of maintaining adequate levels of well-qualified active-duty personnel in the Armed Forces to continue to offer the opportunity for educational assistance under this chapter to individuals who have not yet entered active-duty service; **[and]**

(C) \* \* \*

(D) *indicating the highest level of education attained by each individual who transfers a portion of the individual's entitlement to educational assistance under section 3319 of this title; and*

(2) \* \* \*

(c) \* \* \*

(1) \* \* \*

(2) appropriate student outcome measures, such as the number of credit hours, certificates, degrees, and other qualifications earned by beneficiaries under this chapter and chapter 35

of this title during the academic year covered by the report;  
[and]

(3) *the information received by the Secretary under section 3326 of this title; and*

(4) [(3)] such recommendations for administrative and legislative changes regarding the provision of educational assistance to members of the Armed Forces and veterans, and their dependents, as the Secretary considers appropriate.

**SEC. 3326. REPORT ON STUDENT PROGRESS**

*As a condition on approval under chapter 36 of this title of a course offered by an educational institution (as defined in section 3452 of this title), each year, each educational institution (as so defined) that received a payment in that year on behalf of an individual entitled to educational assistance under this chapter shall submit to the Secretary such information regarding the academic progress of the individual as the Secretary may require.*

\* \* \* \* \*

**Chapter 41. Job Counseling, Training, and Placement  
Service for Veterans**

\* \* \* \* \*

**SEC. 4103. DIRECTORS AND ASSISTANT DIRECTORS FOR VETERANS'  
EMPLOYMENT AND TRAINING; ADDITIONAL FEDERAL  
PERSONNEL**

\* \* \* \* \*

(c) *COORDINATION WITH STATE DEPARTMENTS OF LABOR AND VETERANS AFFAIRS.—Each Director for Veterans' Employment and Training for a State shall coordinate the Director's activities under this chapter with the State department of labor and the State department of veterans affairs.*

\* \* \* \* \*

**Part V. Boards, Administrations, and Services**

**Chapter 71. Board of Veterans' Appeals**

\* \* \* \* \*

**SEC. 7107. APPEALS: DOCKETS; HEARINGS**

(a)(1) Except as provided in paragraphs (2) and (3) and [in subsection (f)] *in subsection (g)*, each case received pursuant to application for review on appeal shall be considered and decided in regular order according to its place upon the docket.

\* \* \* \* \*

(d)(1) *Subject to paragraph (2), a hearing before the Board shall be conducted, as the Board considers appropriate—*

(A) *in person; or*

(B) *through picture and voice transmission, by electronic or other means, in such manner that the appellant is not present in the same location as the member or members of the Board during the hearing.*

(2) *Upon request by an appellant, a hearing before the Board shall be conducted, as the appellant considers appropriate—*

(A) *in person; or*

(B) *through picture and voice transmission as described in paragraph (1)(B).*

(e)(1) *In a case in which a hearing before the Board is to be conducted through picture and voice transmission as described in subsection (d)(1)(B), the Secretary shall provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at an appropriate facility within the area served by a regional office to participate as so described.*

(2) *Any hearing conducted through picture and voice transmission as described in subsection (d)(1)(B) shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing.*

[(e)(1) At the request of the Chairman, the Secretary may provide suitable facilities and equipment to the Board or other components of the Department to enable an appellant located at a facility within the area served by a regional office to participate, through voice transmission or through picture and voice transmission, by electronic or other means, in a hearing with a Board member or members sitting at the Board's principal location.

[(2) When such facilities and equipment are available, the Chairman may afford the appellant an opportunity to participate in a hearing before the Board through the use of such facilities and equipment in lieu of a hearing held by personally appearing before a Board member or panel as provided in subsection (d). Any such hearing shall be conducted in the same manner as, and shall be considered the equivalent of, a personal hearing. If the appellant declines to participate in a hearing through the use of such facilities and equipment, the opportunity of the appellant to a hearing as provided in such subsection (d) shall not be affected.]

(f) [(d)(1) [An appellant may request that a hearing before the Board be held at its principal location or at a facility of the Department located within the area served by a regional office of the Department] *In a case in which a hearing before the Board is to be conducted in person, the hearing shall be held at the principal location of the Board or at a facility of the Department located within the area served by a regional office of the Department.*

\* \* \* \* \*

(g) [(f)] \* \* \*

\* \* \* \* \*

## Chapter 74. Veterans Health Administration—Personnel

\* \* \* \* \*

### Subchapter I. Appointments

\* \* \* \* \*

#### SEC. 7402. QUALIFICATIONS OF APPOINTEES

\* \* \* \* \*



(b)(1) \* \* \*

\* \* \* \* \*

(11) \* \* \*

(A) hold a master's degree *or doctoral degree* in mental health counseling, or a related field, from a college or university approved by the Secretary; and

\* \* \* \* \*

#### Subchapter IV. Pay for Nurses and Other Health-Care Personnel

#### SEC. 7451. NURSES AND OTHER HEALTH-CARE PERSONNEL: COMPETITIVE PAY

(a)(1) \* \* \*

(2) \* \* \*

(A) \* \* \*

(B) *Physician assistant.*

(C) **[(B)]** Such positions referred to in paragraphs (1) and (3) of section 7401 of this title (other than the positions of physician, dentist, **[and registered nurse]** *registered nurse, and physician assistant*) as the Secretary may determine upon the recommendation of the Under Secretary for Health.

\* \* \* \* \*

### Part VI. Acquisition and Disposition of Property

\* \* \* \* \*

#### Chapter 81. Acquisition and Operation of Hospital and Domiciliary Facilities; Procurement and Supply; Enhanced-Use Leases of Real Property

\* \* \* \* \*

#### Subchapter II. Procurement and Supply

\* \* \* \* \*

#### SEC. 8127. SMALL BUSINESS CONCERNS OWNED AND CONTROLLED BY VETERANS: CONTRACTING GOALS AND PREFERENCES

\* \* \* \* \*

(h) \* \* \*

(2) \* \* \*

\* \* \* \* \*

**[(C)]** The date that is ten years after the date of the veteran's death.

(C) *The date that—*

(i) *in the case of a surviving spouse of a veteran with a service-connected disability rated as 100 percent disabling or who dies as a result of a service-connected disability, is 10 years after the date of the veteran's death; or*

(ii) *in the case of a surviving spouse of a veteran with a service-connected disability rated as less than 100 percent disabling who does not die as a result of a service-connected disability, is three years after the date of the veteran's death.*

(3) Paragraph (1) only applies to a surviving spouse of a veteran with a service-connected disability [rated as 100 percent disabling or who dies as a result of a service-connected disability].

(i) *TREATMENT OF BUSINESSES AFTER DEATH OF SERVICE-MEMBER-OWNER.—(1) If a member of the Armed Forces owns at least 51 percent of a small business concern and such member is killed in line of duty in the active military, naval, or air service, the surviving spouse or dependent child of such member who acquires such ownership rights in such small business concern shall, for the period described in paragraph (2), be treated as if the surviving spouse or dependent child were a veteran with a service-connected disability for purposes of determining the status of the small business concern as a small business concern owned and controlled by veterans for purposes of contracting goals and preferences under this section.*

(2) *The period referred to in paragraph (1) is the period beginning on the date on which the member of the Armed Forces dies and ending on the date as follows:*

(A) *In the case of a surviving spouse, the earliest of the following dates:*

(i) *The date on which the surviving spouse remarries.*

(ii) *The date on which the surviving spouse relinquishes an ownership interest in the small business concern and no longer owns at least 51 percent of such small business concern.*

(iii) *The date that is ten years after the date of the member's death.*

(B) *In the case of a dependent child, the earliest of the following dates:*

(i) *The date on which the surviving dependent child relinquishes an ownership interest in the small business concern and no longer owns at least 51 percent of such small business concern.*

(ii) *The date that is ten years after the date of the member's death.*

(j) [(i)] \* \* \*

\* \* \* \* \*

(k) [(j)] \* \* \*

\* \* \* \* \*

(l) [(k)] \* \* \*

\* \* \* \* \*

(m) [(l)] \* \* \*

\* \* \* \* \*

## Workforce Investment Act of 1998

(29 U.S.C. 2871(d)(1))

\* \* \* \* \*

### Title I. Workforce Investment Systems

\* \* \* \* \*

#### Subtitle B. Statewide and Local Workforce Investment Systems

\* \* \* \* \*

#### Chapter 6. General Provisions

##### SEC. 136. PERFORMANCE ACCOUNTABILITY SYSTEM.

\* \* \* \* \*

(d) REPORT.—

(1) IN GENERAL.—Each State that receives an allotment under section 127 or 132 shall annually prepare and submit to the Secretary a report on the progress of the State in achieving State performance measures, including information on the levels of performance achieved by the State with respect to the core indicators of performance and the customer satisfaction indicator. The annual report also shall include information regarding the progress of local areas in the State in achieving local performance measures, including information on the levels of performance achieved by the areas with respect to the core indicators of performance and the customer satisfaction indicator. The report also shall include information on the status of State evaluations of workforce investment activities described in subsection (e). *The report also shall include information, for the year preceding the year the report is submitted, on the number of job fairs attended by One-Stop Career Center employees at which the employees had contact with a veteran, and the number of veterans contacted at each such job fair.*

\* \* \* \* \*

## Veterans' Benefits Improvements Act of 1996

(Public Law 104–275; 38 U.S.C. 5101 Note)

\* \* \* \* \*

### Title V. Department of Veterans Affairs Administrative Matters

\* \* \* \* \*

**SEC. 504. PILOT PROGRAM FOR USE OF CONTRACT PHYSICIANS FOR  
DISABILITY EXAMINATIONS**

\* \* \* \* \*

**(c) LICENSURE OF CONTRACT PHYSICIANS.—**

*(1) IN GENERAL.—Notwithstanding any law regarding the licensure of physicians, a physician described in paragraph (2) may conduct an examination pursuant to a contract entered into under subsection (a) at any location in any State, the District of Columbia, or a Commonwealth, territory, or possession of the United States, so long as the examination is within the scope of the authorized duties under such contract.*

*(2) PHYSICIAN DESCRIBED.—A physician described in this paragraph is a physician who—*

*(A) has a current license to practice the health care profession of the physician; and*

*(B) is performing authorized duties for the Department of Veterans Affairs pursuant to a contract entered into under subsection (a).*

**(d) [(c)] SOURCE OF FUNDS.**—Payments for contracts under the pilot program under this section shall be made from amounts available to the Secretary of Veterans Affairs for payment of compensation and pensions.

**(e) [(d)] REPORT TO CONGRESS.**—Not later than three years after the date of the enactment of this Act, the Secretary shall submit to the Congress a report on the effect of the use of the authority provided by subsection (a) on the cost, timeliness, and thoroughness of medical disability examinations.

\* \* \* \* \*

## **Department of Veterans Affairs Health Care Programs Enhancement Act of 2001**

**(Public Law 107–135; 115 Stat. 2459; 38 U.S.C. 1710 note)**

\* \* \* \* \*

### **Title II. Other Matters**

\* \* \* \* \*

**SEC. 204. PROGRAM FOR PROVISION OF CHIROPRACTIC CARE AND  
SERVICES TO VETERANS.**

\* \* \* \* \*

**(c) LOCATION OF PROGRAM.**—*(1) The program shall be carried out at sites designated by the Secretary for purposes of the program. The Secretary shall designate at least one site for such program in each geographic service area of the Veterans Health Administration. The sites so designated shall be medical centers and clinics located in urban areas and in rural areas.*

*(2) The program shall be carried out at not fewer than two medical centers or clinics in each Veterans Integrated Service Network by not later than two years after the date of the enactment of the 21st Century Veterans Benefits Delivery and Other Improvements*

*Act, and at not fewer than 50 percent of all medical centers in each Veterans Integrated Service Network by not later than three years after such date of enactment.*

\* \* \* \* \*

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